

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

NICOLE P. ERAMO, * CIVIL ACTION 3:15-CV-00023
* NOVEMBER 1, 2016
Plaintiff, * TRIAL DAY 13, VOLUME 2
vs. *
*
ROLLING STONE, LLC, *
SABRINA RUBIN ERDELY, * Before:
WENNER MEDIA, LLC, * HONORABLE GLEN E. CONRAD
* UNITED STATES DISTRICT JUDGE
Defendants. * WESTERN DISTRICT OF VIRGINIA

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1 (The jury is present in Open Court at 2:01 p.m.)

2 THE COURT: Well, we can report that all 10 jurors
3 are back in their places, ready for defendants' closing
4 argument.

5 Mr. Sexton, if you're ready, you may proceed.

6 MR. SEXTON: Thank you, Your Honor.

7 CLOSING ARGUMENT BY THE DEFENDANTS

8 MR. SEXTON: When I walked in the courtroom this
9 morning, I really thought I would be telling you all "good
10 morning" when I stood up, okay? So I've never actually
11 responded to a three-hour opening [sic] statement, so I'm
12 going to try to make it just a hair under that. But who
13 knows, it could go any way.

14 Like Mr. Clare, I want to thank each of you on behalf of
15 our clients, on behalf of Sabrina, on behalf of Sean, on
16 behalf of Liz Garber-Paul, who is able to join us now that
17 she's -- this case is over.

18 I want to thank you for your time and attention that you
19 have devoted to this important case. It is truly remarkable.
20 You have no idea how many times in the course of decades of
21 doing this I've looked over to see jurors asleep, which is not
22 near as disheartening as looking up there and seeing a judge
23 who's asleep.

24 THE COURT: The day is still young.

25 MR. SEXTON: But I can tell you from personal

1 experience, I have seen both at the same time. So y'all were
2 nothing like that. I mean, it was absolutely inspiring to see
3 you taking notes the way you did, and I know you are exactly
4 the kind of jurors for this case. So we thank you.

5 I want you to know what a great privilege it's been for
6 me and for Liz McNamara and David Paxton and the entire team
7 of people who you don't really get to see much to represent
8 such fine, fine clients. And so it's been a very great honor
9 to be here before you for these 12 days of testimony.

10 And if y'all remember, when we started those 12 days, I
11 told you that you were going to hear a lot of stuff that we
12 didn't think was what the case was about. And I tried to tell
13 you what the case would be about and that our goal throughout
14 the entire time would be to bring you the whole truth on those
15 facts relevant to the case; the whole truth on everything, but
16 trying to keep the evidence focused on those facts.

17 So the -- obviously, the article at issue is about UVa's
18 response to a story. Jackie's actual lede takes very little
19 bit of the article, and the rest is the culture on the campus.
20 And that included the culture at UVa generally and the culture
21 how it had been for decades, according to the article, and
22 then how her story was received and acted on or not acted on
23 by the administration. That's what the article is about.

24 And it was interesting. Mr. Clare, who is a fine lawyer,
25 he said that -- stood up and said this case is not about

1 Jackie's rape and whether she was gang raped. And then by my
2 count, it took an hour and 45 minutes until we got to the
3 actual statements.

4 And I mean that as no disrespect, but obviously there is
5 a huge temptation on the part of Ms. Eramo to sort of
6 piggyback onto the mistakes that were made as to Drew, who may
7 or may not exist. We don't think he exists. But clearly
8 there were huge mistakes as to not bird-dogging that harder,
9 not finding his last name, not insisting. We acknowledge
10 those. This case is not about Drew. Ms. Eramo is not Drew.

11 The three friends. If you recall, I told you in opening
12 we acknowledge huge errors in not being more dogged in
13 obtaining those names and pursuing them. Obviously, Sabrina
14 tells you that she made some mistakes.

15 Sean, Liz Garber-Paul, everyone has huge regrets about
16 not pursuing that lead further. They have regrets about that
17 because it would have kept them from perhaps publishing
18 Jackie's gang rape story. It would not have prevented them
19 from publishing an article about how the University of
20 Virginia responds to allegations of sexual misconduct.

21 There were other people that were considered as
22 alternatives for the article. One of those was Stacy. If you
23 recall, she gets quoted. It's about a -- it's almost a whole
24 page. At least a whole column and a half of the article is
25 about Stacy.

1 Another thing Sean testified to is he had two feature
2 articles in the can. If they had had any doubt whatsoever at
3 any point as to the accuracy of Jackie's story, they would
4 have pulled the plug. That's the only evidence you have.
5 There is no evidence to the contrary.

6 Mr. Clare says, well, you haven't seen a draft.

7 Well, we had articles ready to substitute. That would
8 have taken a process, but the decision would have had to have
9 been made.

10 So those are the issues. The issues are, how did UVA
11 respond.

12 I think if you recall Mr. Clare in his opening, he
13 says -- he said very early on -- it's my third point: Nicole
14 Eramo is a private citizen.

15 True to the extent that we all are. But as I told you in
16 opening, she's a public figure, a public figure. She's a
17 highly compensated official at the University of Virginia,
18 which is a state agency, and she is a public figure.

19 The judge has already ruled that she is a public figure.
20 That's what makes this an actual malice case. We are entitled
21 as citizens of the United States and the Commonwealth of
22 Virginia to criticize public figures. You are; I am; Rolling
23 Stone is. It's our right as citizens.

24 And so when a university puts someone out as the point
25 person for their policies, for their procedures -- you all

1 remember how I said, you know, if these are the policies and
2 the procedures, Ms. Eramo is where they meet the paper? She
3 is. She is the face of the university on this, and the
4 university always knew that.

5 And so naturally if there is criticism, some of that is
6 going to go her way. If there is praise, some of that is
7 going to go her way.

8 But I want you to recall that there are many University
9 of Virginia officials mentioned in the article, starting with
10 Teresa Sullivan, who you heard that interview; Susan Davis,
11 another very high-ranking official; Allen Groves, another, the
12 dean of students.

13 So it is not as if she is the only University of Virginia
14 official so that when they say "criticism of the
15 administration," that that necessarily means Nicole Eramo.
16 But even if it did, she is the face of the administration when
17 it comes to these issues of sexual assault.

18 Now, with that kind of general overview, you have to, in
19 looking at all of these -- and we're going to go through --
20 we're going to go through the jury instructions, because that
21 is the key.

22 One of y'all asked early on for the judge: Can you just
23 define defamation for us, you know, so we can cut to the
24 chase?

25 I wish we could do that. And if you remember, I kind of

1 tried to do that, and I -- this should be the -- oh, I'm
2 sorry.

3 This is going to be 29, slide 29. Okay.

4 If you all want to know how this works in real life, you
5 start out with a nice, clean outline, and then someone talks
6 for 3 hours and you end up with something that looks sort of
7 like that. So if that's any indication of my brain today, so
8 this could be fun.

9 Y'all remember this slide that I put up? And I said you
10 were going to get to this point, and you'd be at the finish
11 line, and you'd have some questions that you needed to ask.

12 Was the statement actually about her? Was it factually
13 false in a material way? Did it defame her? Did it cause
14 actual damage? And was it made with actual malice?

15 And I told you then that actual malice would be defined
16 for you as knowing it to be false or subjectively holding
17 serious doubt as to the truth of the statements.

18 Now, if you recall, I played this not only at the
19 beginning of opening but again at the end. But unfortunately,
20 I did not define "defamed her," so fair criticism, fair
21 criticism, I didn't get you that.

22 All right. So one of the things that I want to focus you
23 on -- because my goal in doing a closing statement is really
24 twofold. One, it is to tell you what the law is, because the
25 judge is going to instruct you on the law, and you will get --

1 you will get a book. It will be about this thick. You will
2 take it back with you. It will have page numbers at the
3 bottom. So when I go through these, I'm going to give you the
4 page number so y'all can write it down if you want to or you
5 can find it back there.

6 But this is the manual as far as how to do this. All
7 right?

8 But I also -- you had 12 days of evidence. I want to
9 give you some overview as to some of the evidence we think is
10 relevant. Obviously, it's impossible to cover it all, but --
11 I think there's 285 documents in those binders. I'm going to
12 give you numbers today for some of those documents probably,
13 if I remember, if it's still on these pages. And probably the
14 best way to do it is to go to those binders and look under
15 that tab.

16 Because I think you all probably figured out that once
17 you get to the document, it might have three or four different
18 numbers on it from its history in this case. So look for the
19 tab.

20 All right. One of the -- so right now what I'd like to
21 do is go ahead and start with the actual jury instructions.

22 This is the instruction of defamatory meaning. And Mr.
23 Clare spoke on this just briefly.

24 But defamation is a false statement -- is a false factual
25 statement. All right? It's not an opinion. It's a false

1 factual statement that concerns and harms the plaintiff or the
2 plaintiff's reputation. All right?

3 To be defamatory, it must be more than merely insulting,
4 offensive, unpleasant, or inappropriate. It must have made
5 Nicole Eramo appear odious, infamous, or ridiculous, rendering
6 her contemptible or ridiculous in the public's estimation and
7 exposing her to public hatred, ridicule, or contempt.

8 When you are looking at these -- this is -- when you are
9 looking at these statements, you will want to, as it says on
10 the bottom, take them in their plain and natural language and
11 not -- and you have to understand them as people would
12 normally understand the words to be used in the context in
13 which they appear. All right?

14 Now, as to the article. And this is important. If you
15 remember, we started and there were four claims in the
16 article. You remember the highlighted part? Number 4 is
17 gone. Number 4 is gone. The judge has ruled as a matter of
18 law that number 4 is gone. So that's a very important thing
19 for you to remember when you go back.

20 We are looking at three very specific statements, and
21 only three, from this article.

22 Another thing, very important: If you recall, I told you
23 in opening that the plaintiff was suing on something called
24 defamation by implication, and the judge at one point read you
25 a statement that had been produced by the plaintiff as to what

1 that was.

2 Just to highlight you on that, that was where the
3 plaintiff alleged that taken as a whole and viewed in the
4 context with its headlines, illustrations, captions,
5 promotional materials, and all of that, it insinuates that
6 Nicole Eramo acted as a false friend, pretending to be on
7 Jackie's side while at the same time discouraging Jackie from
8 pursuing a formal complaint or police investigation regarding
9 her rape allegations in order to suppress the assault and
10 protect the university's reputation.

11 Do y'all remember that?

12 All right. Now, that is something that a great deal of
13 the evidence in this case dealt with. I asked so many
14 witnesses about it. I said, did you intend to convey this?
15 Did you intend? Did you intend? And it was obviously a big
16 part of what the plaintiff was trying to prove.

17 This case -- this statement is gone as well. The judge
18 has dismissed that claim. There is no claim in this case for
19 defamation by implication.

20 These are key facts for you to remember. I would suggest
21 to you that that renders roughly 97.3 percent of what Mr.
22 Clare said in opening absolutely irrelevant.

23 I'll give you an example.

24 Remember how he talked about a picture paints a thousand
25 words, a picture paints a thousand words; does this make

1 Ms. Eramo look bad; is it fair to her?

2 Do you remember the photo illustration that's done by
3 John Ritter in the style that he does everything with? That
4 is not a statement that is challenged in this case.

5 People suing for defamation can sue for defamation based
6 on a picture. They can. It could be one of those statements.
7 It could be one, two, three, and four, the photo illustration,
8 all right? That's not this case. They have not sued on the
9 photo illustration.

10 The photo illustration was relevant back when there was a
11 defamation by implication because you were to consider
12 illustrations, captions, everything. Gone. Gone.

13 So that renders -- that takes us to what the real
14 statements are, all right? And we will go through this. But
15 as to those statements, there has to be this defamatory
16 meaning, okay? So that's a very significant issue.

17 All right. Second, I told you in our finish line slide
18 that it has to be of and concerning Ms. Eramo. All right?
19 That is true. Here is the instruction that will come from the
20 Court.

21 It has to be published of and concerning her, and it must
22 be made -- let's see -- in order for the statement made by the
23 defendant to be of and concerning the plaintiff, it is not
24 necessary that the plaintiff be designated by name in the
25 statement. It is a sufficient designation of or reference to

1 the plaintiff if, under all the surrounding circumstances,
2 those who hear or read the statement would reasonably believe
3 that the plaintiff was the person referred to.

4 I'll submit to you that this is not an issue as to the
5 three statements in the articles, all right? Because those --
6 those statements are very clearly about Nicole Eramo.

7 If you remember, the first one is sharing her story,
8 discouraged her from sharing her story with Rolling Stone.
9 That's obviously talking about the dean.

10 Then you have rape school. That's obviously talking
11 about the dean because it says Jackie says, you know, that
12 Dean Eramo said this.

13 And then the other one is about a nonreaction after Dean
14 Eramo has been shown -- I mean been talked to about these
15 other two gang rape victims. So those are clearly about her.

16 I would submit to you, of and concerning is a huge
17 problem for the plaintiff in the post-article statements by
18 Sabrina where she is talking on one morning to Lehrer and
19 Slate in these back-to-back interviews. Sabrina never
20 mentions Dean Eramo's name. Not once. Sabrina never mentions
21 Dean Eramo's name.

22 Look through her statements. All you will see was the
23 administration, the administration, the school, the school.

24 And they're not questions where she's being asked about
25 the article. Very important. She's not -- she's not asking

1 those questions: What did you mean in the article when you
2 said this?

3 It's way more backgroundy stuff like: What did you find
4 when you researched this? You know, those are the type of
5 questions you'll see that those are the answers to. All of
6 those have serious problems with of and concerning.

7 Another statement you're going to get -- by the way, you
8 see how this says "Not Statements About UVA"? You won't have
9 that at the top of your jury instructions. This is notes for
10 me. All right? So that these are names that -- now, it might
11 have the defamatory meaning, of and concerning.

12 Right here there will not be one that says "Not
13 Statements About UVA," but you will get this instruction. It
14 is in your package.

15 It says: You are instructed in this case that every
16 American citizen, including our clients, have the right to
17 criticize the actions and statements of any state government
18 agency, including the University of Virginia, and to criticize
19 actions taken or not taken by that state government agency.

20 Critical point is highlighted here: If you decide that
21 any of the statements at issue are about actions, statements,
22 or positions taken by the University of Virginia or others who
23 work for UVa and not about Nicole Eramo personally, then you
24 must find for the defendants with respect to those statements.

25 The plaintiff must prove by a preponderance of the

1 evidence that the statement is specifically directed at her.

2 Again, I will tell you that this should not be an issue
3 as to the three statements in the article because they are all
4 about those three. "Share her story," "rape school," and
5 "nonreaction" are about Dean Eramo and how she reacted
6 personally or things she would have said. This is a huge
7 problem for the plaintiff in the post-article statement.

8 Falsity. The plaintiff has the burden of proving that
9 the statement is false.

10 No matter how inflammatory or hurtful a statement may be,
11 no matter what the defendants' motive in writing or publishing
12 it, if the plaintiff fails to prove to you that the statement
13 is false, you must render a verdict for defendant as to that
14 statement.

15 Let me give you an example of that.

16 The nonreaction after Jackie describes the two other gang
17 rapes. What was -- how did Dean Eramo -- what did her face
18 look like after that? And the answer given is nonreaction.

19 Has Ms. Eramo come in and proven to you that her facial
20 expression was anything other than nonreaction? I submit to
21 you, no, she has not.

22 Everything in the record so far is that she behaves in a
23 very neutral and professional manner, particularly when
24 encountering these traumatized students. So there is no
25 evidence whatsoever as to falsity. And that's just one

1 example. All right?

2 Damage. The plaintiff must also prove an element of
3 damage. To damage a plaintiff, the statement must be more
4 than merely insulting, offensive, unpleasant, or
5 inappropriate. It must harm the plaintiff's reputation,
6 rendering her contemptible or ridiculous in the public's
7 estimation.

8 This is a tremendous problem that the plaintiff has with
9 the post-article statements.

10 Probably the most important slide -- and there are
11 several here we're getting into, all right? Actual malice.
12 Remember I told you it's an actual malice case?

13 All right. This one is very important. Let's go through
14 it word for word.

15 In addition to the foregoing elements, plaintiff must
16 prove -- plaintiff also has the burden of demonstrating by
17 clear and convincing evidence that a defamatory statement was
18 made by one or more defendants with actual malice --

19 All right? This is a defined term, all right? It has a
20 specific meaning in First Amendment cases, and here it is:

21 -- that is, with knowledge of the statement's falsity or
22 with reckless disregard of whether or not it is false.

23 Reckless disregard. So actual knowledge or reckless
24 disregard.

25 All right. So second big news flash. Reckless disregard

1 also has a defined meaning, okay? So when you're considering
2 this term, you don't go and say, well, I know what it's like
3 to be reckless. Reckless means driving with blinders on, as
4 Tom pointed out.

5 That's not reckless here. That is not what this means.
6 The Court is defining for you in this instruction what
7 reckless disregard means right here.

8 Reckless disregard means that the defendant had a high
9 degree of awareness of the probable falsity or must have in
10 fact entertained serious doubts as to the truth of the
11 publication.

12 That's exactly what I said on my finish line slide:
13 knowledge that it's false or serious doubts as to whether it's
14 true.

15 What I told you in opening remains true today. Look at
16 the next sentence: It is a subjective inquiry that focuses on
17 the defendants' state of mind at the time the statements were
18 published.

19 Remember how I said this is all about what was in their
20 head? That's where this is, all right?

21 Let me tell you how this is different from many other
22 cases that you might have been called in to sit on. Let's say
23 you were called in for Mr. Clare's example of a defective car
24 seat case, all right?

25 In that instance, the plaintiff would say that the

1 manufacturer of the car seat was negligent; that they didn't
2 adhere to standards in their industry; that there might have
3 been warning signs to them that they should have heeded, all
4 right; that they didn't pay attention to things like red
5 flags, all right, those type of things. That's a negligence
6 case, all right?

7 And that invites you to compare the defendants' action to
8 a reasonable person. How would a reasonable person respond in
9 that situation? A reasonable person for that car seat
10 manufacturer would be, how would other car seat manufacturers
11 respond.

12 That is not this case. You have to completely scrap that
13 for this case because this is a subjective inquiry as to what
14 was in the defendants' mind. And we told you that at the very
15 beginning, that that's what you were going to be tasked with
16 doing at the end, and it is.

17 I submit to you that this fact alone renders -- what was
18 it, 97.3 percent before? I'm up to 99 percent of what the
19 plaintiff said in opening is completely irrelevant.

20 Remember all those red flags? Should have talked to
21 Drew, should have bird-dogged the three friends, all that
22 business, which I said in opening, we admit that. And you
23 didn't hear one of our witnesses come in here and not.
24 They've been admitting it since December 5th, and particularly
25 since April 5th when the CJR report was published. They do

1 not make excuses for that.

2 Okay. What does -- so let's think about that.

3 We know that in order to find against the defendants, you
4 have to prove -- the plaintiff would have to prove that they
5 knew what they said was false, all right?

6 Now, knew what they said about what? Knew what they said
7 about every word in this 9,000 page [sic] article? No.
8 Actually, it's knew what they said about the plaintiff.

9 How many statements is that? That's three, and you know
10 exactly what they are: discouraged her; rape school;
11 nonreaction. Did the defendants have a subjective knowledge
12 of falsity, or did they entertain serious doubts as to those
13 three things.

14 Now, you might -- and I would if I were sitting with you,
15 where you are, I would say, well, why in the world did you
16 spend my 8 a.m. to 6 p.m. talking about Jackie, the three
17 dudes, and Drew and all the stuff you didn't do as to that?

18 Because the plaintiff gets to put on the evidence they
19 want to put on. That doesn't mean it's relevant.

20 The relevant evidence is whether my clients - Sabrina,
21 Sean, Liz Garber-Paul, Rolling Stone - whether they
22 subjectively believed that the three statements we're down to
23 were false or whether they entertained serious doubts as to
24 their truth.

25 There is no evidence in the record before you, other than

1 the un rebutted evidence from each one of those witnesses, that
2 they absolutely believed it to be true. Absolutely.

3 You saw Sabrina testify -- did you all know that was five
4 calendar days that that took? It was -- it wasn't five full
5 days of testimony, but it was five days of -- covered five
6 calendar days.

7 I think you got a chance to see who she is and how she
8 responds. I think you got a chance to know whether you
9 believe her when she says, I trusted Jackie. I trusted Jackie
10 till the evening -- early morning hours of December 5th.

11 That's the question. That's the question as to Sabrina.

12 Because at the end of the day, Jackie's the one who gave
13 her those words: nonreaction, rape school, and discouraged
14 her from sharing her story. All right?

15 So if Jackie wasn't credible, that's a good point. If
16 Jackie -- if she believed that Jackie was just a liar, well,
17 that would be important to know. But the only evidence that
18 you have as to what's in Sabrina's state of mind is what
19 Sabrina told you, all right?

20 Now, as to whether she held serious doubts, it's the same
21 question. I asked her the same questions. She gave you the
22 answers. You either believe them or you don't.

23 I submit to you that the only way that you can find
24 against Sabrina in this case is to find that she lied to you
25 on the stand. That's the only way. Because it is a

1 subjective inquiry about what's in her state of mind. Did she
2 know or did she entertain serious doubts as to the truth.

3 Now, I will submit to you that she proved, and she's
4 certainly proven that she had no doubts, no serious doubts at
5 all, as to any part of the story, the Jackie story, what
6 Jackie told her about the rape, how this -- how the friends
7 responded, much of which was corroborated by other evidence
8 she gathered in the course of her investigation.

9 But right or wrong, foolish or not -- and you know she
10 does feel foolish. This is a woman at the top of her field.
11 She's an excellent journalist. She feels extraordinarily
12 foolish for having fallen for this, and it's cost her
13 everything. She hasn't written a classified since then.

14 So the -- but -- so foolish doesn't count.

15 But back to the question: What does high degree of
16 awareness look like?

17 Remember the "our worst nightmare" e-mail? That's what
18 it looks like. It looks like an e-mail that you send on
19 December 5, 2014, at 1:54 a.m., that you send to your editors,
20 your friends, the people you have let down. And you say: I
21 just got off the phone with Jackie and her friend Alex.
22 Neither I nor Alex find Jackie credible any longer. We have
23 to issue a retraction.

24 That's what serious doubts looks like. And you have a
25 proof as to the precise moment in time that it occurred.

1 That's all you need. That's the most important piece of
2 evidence in this case. This is the smoking gun.

3 When did Sabrina figure it out? 1:54 a.m.

4 Now, if you recall, I told you in opening -- remember
5 this? I said -- I'm going to put this in a little context,
6 maybe going out on a little limb here. I've been known to do
7 that.

8 But the -- I heard more in this case than just Sabrina
9 was foolish. I certainly heard more in the closing than
10 Sabrina was foolish. I heard words to the effect that she had
11 bad character, that she lied. I know I heard a few times
12 "lied."

13 And I want to tell you, I'm playing this to you for two
14 reasons. One, I'm going to play you that voicemail she left
15 for Jackie before she wrote that e-mail. Remember, her whole
16 world's just fallen apart, and she is faced with the toughest
17 e-mail she's going to ever write. And she's told Jackie, she
18 said, if you're ever going to go to the police, do it now.

19 She's got to send that e-mail, but before she does, she
20 calls Jackie at like 1:30 in the morning and leaves this
21 voicemail, begging her not to go to the police if she's not
22 100 percent sure with her story.

23 Can you play that for me, Scott?

24 (Audio recording played, Sabrina voicemail to
25 Jackie, 12/5/14.)

1 MR. SEXTON: That's what serious doubts sounds like.

2 But you know what else that is? That's what good
3 character sounds like. That is good character. That is
4 somebody doing the right thing. That's a grownup doing the
5 right thing.

6 Now, the -- I heard in the opening also a statement that
7 Sabrina had manufactured facts, just made stuff up. Do y'all
8 remember that?

9 And I want to refer you back to -- you know, my goodness,
10 I don't know what we would have done without this document.
11 Plaintiff's Exhibit 139 is the Columbia Journalism Review, all
12 right? And in this, they reviewed everything about 10 ways to
13 Sunday, all right?

14 But one of the things they did review was whether Sabrina
15 or anyone at Rolling Stone had made facts up. They actually
16 addressed this issue. And what did they say?

17 This is on page 59 of Plaintiff's Exhibit 139. The
18 experts in this field said, "There is no evidence in Erdely's
19 materials or from interviews with her subjects that she
20 invented facts."

21 There's no evidence, all right? You can search all 285
22 of the documents here that you have. You will find no such
23 evidence.

24 Now, the CJR also found what you are ultimately tasked to
25 find. Remember how this is a subjective state of mind case

1 where you have to determine actual malice? CJR found that
2 Erdely believed firmly, not just believed but believed firmly,
3 that Jackie's account was reliable. So did her editors and
4 the story's fact checker, who spent more than four hours on
5 the telephone with Jackie reviewing every detail of her
6 experience.

7 So those are facts, all the facts, that you should
8 consider. You should consider everything in determining
9 this -- everything about her demeanor, everything about how
10 she responded to questions, everything about how she
11 interacted in the September 11 and September 12 audios that
12 you heard, and everything that you heard about how Sabrina
13 thought and how Sean thought and how Liz Garber-Paul thought.
14 And that's all testimony. But all of that should be taken
15 into consideration. And when you do, there's just simply no
16 evidence that they did not firmly believe.

17 Now, there's another -- we still haven't made it through
18 the jury instructions, guys. Don't start fading on me, okay?

19 Actual malice -- this is another actual malice
20 instruction, okay? When you get back there, you are going to
21 find out that -- no offense, these things are organized, I
22 mean, to where it will say "actual malice," and then you'll
23 flip another couple pages and then it will say something else
24 about actual malice. And you're like, what? I mean, it's --
25 just not how it's -- that's just the way it happens.

1 But this is one of the ones on actual malice. The
2 underlining on here is mine. You won't have this on your
3 copy.

4 Actual malice is not negligence.

5 Remember how I told you this isn't like the car seat
6 case, this isn't like the blinders case, this isn't like the
7 red flags case? That closing was about another case, because
8 actual malice is not negligence.

9 Reckless conduct is not measured by whether a reasonably
10 prudent person would have published or would have investigated
11 further before publishing.

12 So all that talk about journalistic standards, and you
13 breached these journalistic standards and whatnot, you have to
14 put it in the context of this legal statement and just cut to
15 the chase right there at the bottom in light of all that.

16 A failure to -- no, let's not -- let's read in the middle
17 because it goes right to what you heard in the first part of
18 Mr. Clare's closing.

19 Remember how he said a failure to investigate, you know,
20 you should consider that? Here's what the instruction says:

21 A failure to investigate does not establish actual
22 malice.

23 Where is the next "not"?

24 It is not enough for the plaintiff to prove that
25 defendant did not conduct a thorough investigation of the

1 facts or that the defendant was careless in the way the
2 defendant wrote or edited the article.

3 Likewise, it is not enough for the plaintiff to prove
4 that the defendant departed from accepted standards of
5 journalism in the reporting, editing, or fact-checking of the
6 article.

7 In order to recover -- here are the magic words --
8 plaintiff must prove that the defendant knew the complained
9 statements were false or in fact entertained serious doubts as
10 to whether they were false or not.

11 That's back to that finish line slide I showed you at the
12 very beginning of my opening and at the very ending of the
13 opening, however many days ago that is now. It was Monday two
14 weeks ago.

15 All right. So I will submit to you there is a reason why
16 we submitted these to you and there is a reason why the
17 plaintiff did not. The plaintiff did not come in and prove to
18 you the facts that will allow you to draw these conclusions.
19 The defendant did. But it is the plaintiff's burden.

20 On this point, one of the slides we've looked at -- and
21 this is very important -- it said that actual malice must be
22 proven by the plaintiff. She's got to prove every element of
23 her case, every element. But actual malice has to be proven
24 by a heightened standard of proof. It's called clear and
25 convincing.

1 So you've heard that word "preponderance" that the judge
2 said. Maybe you don't remember it. It's one of those words
3 we use every day, right? I mean, we don't. So it's one of
4 the words in this.

5 But preponderance means what you find is more probable
6 than not, okay? So that's the normal standard. That's the
7 car wreck standard. That's the car seat case standard.

8 On actual malice, you have to prove it clear and
9 convincing. Clear and convincing is going to be one of the
10 instructions that you have. And clear and convincing is that
11 degree of proof which produces in your mind a high degree of
12 certainty; not just that it's more likely than not, a high
13 degree of certainty that something is true.

14 So when the plaintiff walked into this courtroom, she had
15 the burden of proving that Sabrina knew the statements made
16 about Dean Eramo were false, or she stated them with a high
17 degree of doubt as to whether they were true. She has to
18 prove that.

19 And she can't prove that by just getting her horse a
20 little bit in front of ours, which she can't do anyway. She
21 has to prove it by clear and convincing evidence. That means
22 something that would create in your mind a firm conviction.

23 She has to do the same thing with regard to Sean with
24 regard to Rolling Stone, with regard to Liz Garber-Paul with
25 regard to Rolling Stone. You have to believe these people

1 were harboring these serious doubts, or they knew the stuff
2 was false, and that they chose to publish it anyway. And they
3 have to really have the burden of proving that to you with a
4 very high standard of proof.

5 I will submit to you it has not occurred in this case.

6 Yet again, there's yet another slide because there's yet
7 another page that will be in your book about actual malice.

8 And this is how jury instructions work. At one point
9 you'll be reading something and you say, okay, I get that, so
10 why does it continue to go on?

11 All right. So remember how there was this notion in the
12 case of purposeful avoidance? Like if you failed to go and
13 interview Drew because you just didn't want to hear the
14 answer, you know, because I don't want -- remember we used the
15 phrase "blow up Jackie's story"? Remember that phrase, okay?
16 That's purposeful avoidance. When I choose not to go and talk
17 to Drew, when I choose not to go and talk to the three friends
18 because I'm worried in my mind that the story that I've heard
19 from Jackie is false. That's called purposeful avoidance.

20 So if -- and that's what this instruction is directed to.
21 So if I failed to investigate -- translated, if I failed to
22 call Drew, if I failed to talk to the three friends -- when
23 doubts were in my mind, when doubts were created -- and that's
24 why I highlighted that -- because the story was weakened by
25 inherent probability, internal inconsistency.

1 So if I thought, hey, this can't be true, and I went
2 ahead and didn't follow up on that because of that, then that
3 would be something you could take into account right here.

4 But it's right here. And see the ellipses. This is
5 actually a longer page. But in the middle I put the ellipsis,
6 three periods: If you find the defendants believed their
7 sources and believed in the accuracy of the statements when
8 published, you must find in favor of the defendants.

9 So it comes right back to that same subjective state of
10 mind. It always will, because that's the law.

11 Do you remember that question? Do you remember the
12 question where Liz Garber-Paul was on the stand and
13 Mr. Phillips -- it was toward the end of her examination, and
14 he said words like: You didn't call her because you knew if
15 you did, she would have denied saying those ridiculous
16 statements, or words to that effect. Do y'all remember that?

17 And, you know, didn't you?

18 Those quotes were just too perfect. Remember that line
19 of questioning?

20 That was designed to get at purposeful avoidance, and it
21 did not. It did not go there.

22 Remember what Liz Garber-Paul said? Of course not. You
23 know, of course not.

24 Now, here's another one that you'll want to pay attention
25 to. It's again another one on actual malice, all right?

1 The fact that an article is one-sided or fails to include
2 as many positive features about the subject as negative ones
3 is not indicative of actual malice. All right?

4 Do you remember how much of opening statement from
5 Mr. Clare you heard that said, boy, they could have said this
6 a little nicer. Why did they call her a den mother? Why did
7 they do this or that? Why did they have to say, well, she's a
8 confidante, but people don't know that when they talk to her
9 it's not confidential, which I think is directly related to
10 being a confidante.

11 You know, if I consider you a confidante but I don't know
12 that you can tell people what I tell you, well, that would be
13 an irrelevant fact.

14 But anyway, here it says: The fact that it is one-sided
15 or fails to include as many positives is not indicative of
16 actual malice.

17 Publishers and reporters are entitled to publish unfair,
18 one-sided attacks on public figures, provided they believe the
19 attacks to be true. Back to their subjective state of mind.

20 These are really important jury instructions. That's why
21 I'm taking so long. I really appreciate your patience on it.

22 Neither is actual malice established merely because a
23 defendant selectively chose which facts to present and which
24 facts to omit in advancing a particular viewpoint.

25 Can you all think of one word that comes to mind when you

1 read this? I can. Police. You know, it was in the first
2 draft and you took it out, and it was about the bottle
3 incident, and you could have left it in there, and you could
4 have left it in there.

5 First off, not one of those three challenged statements
6 relates to the police. Not one. Police are irrelevant to
7 this case. But they're really irrelevant once you know that
8 the Court is instructing you that it's not proven by the fact
9 that you decide to take out facts and present ones you want in
10 advancing a particular viewpoint.

11 So I remind you the issue is whether the publisher
12 recklessly or knowingly published false material. Those
13 are -- that's the language of the Court.

14 Again, every time you see this word "reckless disregard,"
15 that phrase, this -- my -- where I'm putting my finger right
16 there, that actually is not in the instruction. I just put
17 that on this slide to remind you. Every time you see
18 "reckless disregard," it is a defined term that means high
19 degree of awareness of probable falsity, or must have in fact
20 entertained serious doubts as to the truth. That's what that
21 means.

22 So that's going to be true anytime you see the words
23 "reckless disregard" in these.

24 Similarly, a journalist may express a viewpoint that is
25 one among a number of possible rational interpretations of

1 ambiguous sources or facts. Even if the interpretation shows
2 that it's wrong or ill conceived, such expression does not
3 amount to actual malice.

4 In other words, Sabrina and Rolling Stone could have
5 gotten it completely wrong. Victim choice may be the best
6 thing since sliced bread. It may be perfect. Clearly, the
7 article suggests otherwise. All right? That's an opinion.
8 That's a viewpoint. That's a point of view. It does not
9 amount to actual malice absent knowledge that the
10 interpretation is false or a reckless disregard of whether the
11 interpretation is false or not.

12 Again, for your benefit, I just remind you again that
13 "reckless disregard" is a defined term in this case.

14 Yet another statement: If you determine that a defendant
15 retracted an allegedly defamatory statement, you may consider
16 that retraction and the circumstances in which it was made in
17 determining whether a defendant acted with actual malice.

18 Does that make sense? All right.

19 If I learn of events that cause me to change my opinion
20 as to whether a source is credible, and if I act on those
21 events or that changed state of mind, if I do those things, as
22 Rolling Stone did here, as Sabrina did, then that is very good
23 evidence as to whether I was acting with that degree of
24 knowledge up until that point.

25 You see what I mean? The fact that something happened on

1 December 5th that caused Sabrina and Rolling Stone to issue
2 that note to the readers, warning everybody that whatever
3 sourced in here to Jackie we no longer believe, we don't know
4 what's true and what's not, but we can't put our name behind
5 it, the fact that that happened, this jury instruction is
6 telling you you can consider that, and you should in this
7 case.

8 Now, to the actual statements. Guys, we made it through.
9 We made it through some of the instructions. Guess what,
10 there's probably at least a half a dozen -- half again as much
11 of them in there, but I picked the ones on actual malice. And
12 you see how many there are? I mean, that's why it's so
13 important. It's plainly an actual malice case.

14 All right. This one was -- this is this discouraged her
15 from sharing her story, all right? This is statement number 1
16 in your book, and it's a -- this is one of those which -- it
17 says, "Lots of people have discouraged her from sharing her
18 story, Jackie tells me with a pained look, including the
19 trusted UVa dean to whom Jackie reported her gang rape
20 allegations more than a year ago."

21 All right. That is a statement.

22 First off, Dean Eramo says it is defamatory. That means
23 it renders her odious and contemptible and all those things
24 that we read about as to what means defamatory.

25 We submit that it doesn't. We submit that first of all,

1 I mean, there are many people, in fact I would say most, who
2 would suggest to lots of people that they should not share
3 their personal story with a national magazine. Right? I
4 mean, this is just common sense. You're going to put your
5 story out there in public in a national magazine. Perfectly
6 rational. Not many people want to do that. I certainly don't
7 want to do it. All right?

8 So as we read this, and as the only way I think it can be
9 read, what the article is saying is that Jackie was
10 discouraged from sharing her story with Rolling Stone.

11 How do we know that?

12 If you go to how that paragraph begins, "Jackie, now a
13 third-year, is worried about what might happen to her once
14 this article comes out."

15 The paragraph is plainly talking about the article.

16 Again, the paragraph ends with, "On this deeply loyal
17 campus, even some of Jackie's closest friends see her going
18 public as tantamount to betrayal."

19 All right. Going public is sharing your story with a
20 national magazine. All right? So it begins with that
21 concept, it ends with that concept, and the sentence right in
22 the middle is sharing her story.

23 So we suggest that there is only one proper English and
24 rational way to interpret that, and that is that sharing her
25 story means sharing her story with the media.

1 All right. Remember how Mr. Clare pointed out how the
2 fact checker said, oh, the biggest deal here is because, you
3 know, sharing her story they can put it so publicly?

4 That's the immediately preceding sentence, all right? So
5 if you go back, it is the very sentence that -- right before
6 the final sentence that says, "On this deeply loyal campus,
7 going public is tantamount to a betrayal."

8 As you remember, Liz Garber-Paul said, look, we're not
9 going to put the word "public" in two sentences back to back.
10 It's covered by the second one. So there is no smoking gun
11 there. That's a very rational editing position not to put
12 that in there.

13 All right. So as to the evidence in this case, what
14 evidence do we have as to this issue?

15 Well, we have Sabrina's notes. We also have the
16 testimony of Sabrina and the testimony of Liz Garber-Paul.

17 Liz Garber-Paul was asked on this stand, sitting right
18 here: And what did you do to satisfy yourself that statement
19 number one, this statement I just read, was accurate at the
20 time you did your fact-checking?

21 "Well, part of what I did was I spoke with Jackie about
22 it, and she confirmed that to me."

23 All right? So she says, the only evidence you have
24 before you is that she confirmed it.

25 To my knowledge, you did not hear anyone say contrary to

1 those facts.

2 Now, what is the other evidence that you have in this?

3 Remember the slides? This is Plaintiff's Trial Exhibit
4 20. These are the Alex Pinkleton slides. These have some
5 interesting and probably very relevant things if you're
6 looking. This -- but in this instance, Alex Pinkleton, who
7 also came in here and testified right here, she's writing
8 these text messages back and forth to Sabrina, all right? And
9 it's this, What is going on? Why is it that Jackie is
10 suddenly saying that -- you know, to her friends; she never
11 said this to Sabrina -- that, you know, maybe she wasn't
12 comfortable using her name, maybe this, maybe that. It was a
13 big mystery at this point because just before this
14 interchange, Sabrina testified that she had had a conversation
15 with Jackie and Jackie was on board, she was fine. In fact,
16 it says it in this chain of text messages.

17 But right here she says: I just want to make sure --
18 this is Alex talking -- that she is comfortable with
19 everything and doesn't feel like she's getting polar opposite
20 information from you and then from Dean Eramo and company,
21 because that's what I see has been happening.

22 All right? So in Sabrina's mind, when she writes these
23 words, that Jackie was discouraged from sharing her story with
24 a national magazine, she has that information both from Jackie
25 and she has this information from Alex, all right? She has

1 two credible sources, two sources she believes to be credible.

2 When Rolling Stone publishes it, they have Liz
3 Garber-Paul, experienced fact checker, calling her up and
4 saying, did you say this? I mean, is this -- did she
5 discourage you from talking to our national magazine? Yes,
6 yes, she did.

7 So this -- you have absolutely got plenty of evidence to
8 make very short shrift of this statement.

9 The next one is the rape school one, because -- statement
10 number 2, "because nobody wants to send their daughter to the
11 rape school." If you recall, this is where the article is
12 talking about how difficult it is to find statistics at the
13 University of Virginia and how she had searched.

14 She also says in the article, and I thought this was very
15 relevant, that every time she would ask, she'd get the
16 runaround. It says it in the article. She said she was --
17 she kept trying to ask for the same information. How do I get
18 these statistics?

19 And the press release -- the press people, the press
20 department there at UVa, would tell her, oh, go to the police
21 department, they'll get you the information.

22 And then she'd go to the police department and they'd
23 say, no, we don't have that information. You've got to go
24 back to, you know, to some other place to get it.

25 So this was a very frustrating thing, and that's what's

1 described in the first part of this.

2 It's also described that of the 38 complaints -- or 38
3 reports that the school received that year, only nine resulted
4 in complaint. That was a pretty big deal in the article,
5 because that was considered by Sabrina and Rolling Stone to be
6 a very disappointing statistic.

7 But this is the -- clearly coming from Jackie's voice. I
8 say this because every single one of these three statements
9 that we're talking about in the article are clearly sourced
10 from Jackie.

11 And so when Mr. Clare was talking about how he was just
12 so confused, how would you know, how would you know when you
13 read the article, if you have this retraction notice above it,
14 you know, the note to readers saying, we have lost confidence
15 in Jackie, if you have that, how would you ever know what was
16 being retracted?

17 I submit to you there is no way you could not know that
18 the three statements at issue were attributed to Jackie.

19 And why is that? Because those three statements say it.
20 She says, she discouraged me. She says -- this is what the
21 article says: Jackie says, because nobody wants.

22 It's very easy. This is not a mystery. This is not an
23 attribution problem.

24 Now, here's the evidence as to -- I want to play for you
25 this segment, remember, from September 11. This, by the way,

1 was the second time that Jackie had told her the rape school
2 comment. If you wanted to find the first time, it's in
3 Sabrina's notes at page 4314. So that big binder which is
4 Plaintiff's Exhibit 10, which, by the way, I suggest you don't
5 use.

6 When you're going back, you know, the bound one? This
7 one, okay? Use Defendants' Exhibit 64 if you want to look
8 something up, because it's got fewer redactions. It's nothing
9 bad about what they were trying to do. Their version was just
10 more protective of privacy because I think those things had
11 been filed earlier in court proceedings, and so there's --
12 they were doing nothing wrong with their version, it's just
13 got more redactions. So I would suggest you use Defendants'
14 Exhibit 64.

15 Sorry for that. But when you do, you would -- if you
16 went to page 4314 to 15, you would find the interview when
17 Jackie talked about this the first time. Now, here's this
18 audio.

19 Scott, do I just hit play? No, sorry. Can you do it?

20 (An audio recording was played, 09/11/2014 interview
21 of Jackie.)

22 MR. SEXTON: All right. I told you all at the
23 beginning of this case that there were just very few instances
24 in my legal career, and I think in most cases, where you have
25 evidence like this that proves exactly what happened. Usually

1 you have people coming in two years later and they're trying
2 to remember, but here it was a really -- a good thing that --
3 I know it might not have been the most fun two and a half
4 hours of your life to listen to that audio all the way
5 through, but it was evidence that you can't get anywhere else,
6 because nobody's memory is that perfect that many years later.

7 I will suggest to you that another thing that is unique
8 in this case is this, these notes. I mean, y'all heard --
9 y'all heard -- remember when Teresa Sullivan's interview was
10 playing, that audio where she was talking to Teresa Sullivan,
11 and in the background you hear just Sabrina just tearing up
12 the keyboard?

13 All right? That's how these notes got put together. You
14 hear it. She is a fierce typist. I will warn you she's not
15 very correct in her spelling, okay? So when you see some of
16 these spellings, you've just got to be a little creative, but
17 you can get there, all right?

18 Now, while I'm on that subject and while I've got this
19 document in front of me -- and this is skipping ahead because
20 that's how my brain works. But you remember when Mr. Clare
21 said to you, just, oh, just how telling and how awful, and
22 what a hideous person Sabrina is for turning off her recorder
23 and having a conversation?

24 The crazy thing is, if you really were that kind of
25 person -- I think Sabrina explained it. She said, I don't

1 want to go back home and transcribe my notes, right?

2 Can you switch me over to the ELMO?

3 While I was listening to that, I just highlighted this.

4 All right.

5 If you're that kind of person who is just trying to hide,
6 and you're a snake in the grass and you're pulling all these
7 tricks, does it make any sense whatsoever to say, I turn the
8 recorder off, and then describe exactly what you did? Right?

9 The only reason Mr. Clare has any idea what she talked
10 about is because she wrote it down. And she says, I turn the
11 recorder off and tell them, I do think there have been some
12 legit, worrisome issues that have been raised, and that may
13 not reflect well on the administration, of which Dean Eramo is
14 the most public face -- this is an example of that great
15 spelling -- because she is the one who deals with the
16 "studnet," because I do have some questions about whether
17 Jackie's case has been handled properly.

18 If she had bad motives, if she was trying to pull a fast
19 one, you don't turn your recorder off and then summarize what
20 it is you said, right?

21 See if I'm getting ahead of myself here.

22 Miss Garber-Paul testified about this same thing. If you
23 recall, she was asked to comment on this statement, which is
24 statement number 2, challenged statement in the article. And
25 she was asked on this witness stand under oath: "Did Jackie

1 tell you that?"

2 You see her answer there: "Yes."

3 "Did you ask her specifically that quote, or how did it
4 come up?

5 "I asked her about this, this meeting, and, you know,
6 what happened when she asked Dean Eramo about why these things
7 weren't easily available for her on the website. And Jackie
8 volunteered this quote to me."

9 In this context, you -- you also realize what
10 "volunteered" means in this context. Is it -- Liz did not
11 have to go to her and say, did you say these words -- did you
12 hear her say these words, "rape school"?

13 What is -- what Liz is saying there is, I asked a general
14 question: Tell me about this topic. And in describing this
15 topic, she volunteered those words.

16 That provided a high degree of confidence for Liz that
17 these were in fact true quotes that were being attributed.

18 While we are on that subject, I think it is very
19 important in your consideration of this to know that Jackie
20 really loved Dean Eramo. That's really clear. Sabrina
21 believed it to be true. Liz Garber-Paul said she knew it to
22 be true. Sean knew it to be true because he had learned it
23 from Liz and Sabrina. Everyone involved who was assessing
24 this statement knew that that -- that the person who was
25 making it, reporting it, had in fact a great deal of affection

1 for Dean Eramo. That goes to why they believed it was true as
2 well.

3 A third thing I will have you consider on this issue is
4 that Dean Eramo was clearly on record making some
5 inappropriately candid statements to students as a
6 high-ranking dean at the University of Virginia. Do you
7 recall what some of those were?

8 One of them was, "we're flat-out fucked," and that was
9 about Rolling Stone being on campus and Hannah Graham
10 disappearing. That was confirmed not just through the mouth
11 of Jackie but through the mouth of Alex Pinkleton.

12 In fact, Dean Eramo herself says, I probably said it.
13 They haven't come in and said that wasn't false, all right?

14 Had that been published in this article, that's a
15 verified source. Would that have been negative? Oh, yes.

16 All right. Do you remember what Dean Groves said about
17 that? He had plainly never heard that when he was up here on
18 the witness stand. Do y'all remember? And Mr. Paxton asked
19 him: Hey, how you feel about your deans going out and, you
20 know, talking about this and saying, in response to a death --
21 or actually a missing student there, and in response to a
22 reporter making inquiries that "we're flat-out fucked"?

23 And he said words to the effect that he would not be in
24 favor of that. And that's the boss. That's the dean. I
25 suggest to you that in all likelihood he --

1 Is it note time? Okay. You all can do hand signals too,
2 like a picture. This one is land the plane though, okay?
3 It's universal. When you've had it up to here, okay, you just
4 throw those runway lights on and we're down in about five
5 minutes.

6 But the fact that Rolling Stone decided not to publish
7 that statement says a lot about whether they were out to in
8 fact harm Dean Eramo. If they wanted to harm Dean Eramo, who
9 they, by the way, don't know, they never met her -- as every
10 one of them explains, she was simply the person in that public
11 position. Sabrina met her one time, and that was at the Board
12 of Visitors meeting where she said she attempted to introduce
13 herself to her, and I think Dean Eramo said, I'm sorry, I
14 can't talk. You know, it's -- sorry, we're not being able to
15 talk.

16 And so anyway -- but that's it. They don't know each
17 other. My bet is they'd like each other.

18 Do you want to take a break?

19 THE COURT: Whenever you're at a good point.

20 MR. SEXTON: Okay. I'm there.

21 THE COURT: All right. So ladies and gentlemen, I
22 understand that you would like to take a break during this
23 segment of the closing arguments.

24 Again, I would ask that while you're away from us you not
25 discuss the case with one another nor permit anyone to discuss

1 it with you.

2 Just for your planning, I expect to try to complete all
3 of the closing arguments today, so we'll just see how it goes.
4 We may wait and have the Court's charge in the morning.
5 Again, we'll see how much time is left at the end of the day.

6 Let's plan to return at 25 after the hour.

7 Ask the marshal declare the Court in recess.

8 (A short recess was taken at 3:11 p.m.)

9 (The jury is present in Open Court at 3:26 p.m.)

10 THE COURT: We can report that all 10 jurors are
11 back, ready for the continuation of defendants' argument.

12 MR. SEXTON: When we paused, we were talking about
13 the "rape school" statement, which is statement number 2.
14 That was 2 of 3 statements challenged in the article.

15 Another thing -- and I had told you about the
16 inappropriately candid statements that had been made, and I
17 think we've seen other examples of that. I'm not judging
18 anybody, certainly, for use of language because people who
19 live in glass houses...

20 But the -- as a dean of students, I think we also saw
21 some examples of kind of similar writing to students saying,
22 you know, awesome bitches and such things as that. No
23 judgment. But there is a recognition that there is this
24 pattern of very candid, candid behavior.

25 Another thing I want to point out to you as to what

1 Sabrina, Rolling Stone, Liz, would have considered relevant in
2 assessing this quote, and I think it's what all writers
3 consider when they're assessing a quote, was whether the
4 source had been accurate as to other quotes that she had
5 provided.

6 In other words, if you tell me something and you say five
7 things to me, you know, well, David said X and Liz said Y, and
8 then I go and talk to David and I say, David, did you say X
9 and, Liz, did you say Y, and they confirm it, well, I'm going
10 to start believing that you're a good person as far as
11 attributing quotes. You're good at it.

12 And so here Sabrina had, not purposefully, I don't think,
13 but she had followed up on Jackie with regard to those
14 incidents. And that was in two or three examples. One of
15 them was the "flat-out fucked" statement. She heard it from
16 Jackie.

17 Weeks later she asked Alex Pinkleton, and Alex Pinkleton
18 confirmed it. And it's in her notes that, yeah, that's what
19 Dean Eramo said.

20 Another example: All the boys have graduated.

21 Remember that? It was first told to her by Jackie. Then
22 she talks to Alex and says, Alex, did you hear that from Dean
23 Eramo when you were at that meeting? Yes, it is confirmed.

24 So by this point in time, Jackie has been established,
25 just in these other examples, as being someone who is fairly

1 reliable in providing quotations. And again, you have to all
2 put that in the context of the fact that she had great
3 affection for Dean Eramo, as did Alex. So those are very
4 relevant.

5 Now, within the factual context in which this statement
6 is made, nobody wants to be a rape school, do you recall
7 Jackie actually talked about this in her deposition? That
8 deposition was probably painful. There was a lot of "I don't
9 know," "I don't remember," but this is one that wasn't. Do
10 you remember?

11 She remembered this, and she gave testimony on it. And
12 the testimony was confirmatory. She said she couldn't
13 remember exactly saying this to Sabrina, but she certainly
14 remembered that -- dealing with Dean Eramo on this issue. And
15 she pointed that out.

16 And so she went on for probably -- that was probably one
17 of the most substantive conversations that was played in her
18 deposition. So Jackie even did not retract having heard this.

19 Now, the -- within this context also, it's very important
20 to remember that the factual point that is being made in the
21 article and the one that Sabrina had researched, the one that
22 Liz Garber-Paul researched, is that these statistics were
23 very, very hard to find at the University of Virginia. It was
24 like -- what'd I say in opening? -- pulling chicken teeth.
25 But it was. She had been asking and asking and asking.

1 And if you remember, for her, she did not get them until
2 the very morning of the Teresa Sullivan interview. Mere
3 minutes before that interview was about to start, she gets an
4 e-mail. I think it was less than an hour before that was
5 supposed to start.

6 So within the context that these are very hard to find --
7 so it did in fact -- the fact that nobody would want to send
8 their daughter to a rape school, whether it's UVa or any
9 school, whether they're publishing these things, was
10 corroborated by the fact that the school did make it
11 incredibly difficult to get.

12 Now, before I move on to the next one, for those of you
13 studious note-takers, I did not give you the numbers of the
14 actual malice instructions when I was going through. And I
15 think they might have been on the bottom of the slide, but I
16 was missing it.

17 When you go back, all those ones I dealt with on actual
18 malice, they're going to be on page 32 to 40. 32 to 40.

19 All right. You all ready for the next statement? I bet
20 you already know what it is. Nonreaction, okay?

21 This is the one where she tells her about the two others
22 that had been gang raped in the Phi Psi house. One had been
23 assaulted by four men in the bathroom. And then as Jackie
24 wrapped up her story -- which is important, okay? As Jackie
25 wrapped up her story -- that's what we're talking about -- she

1 was disappointed by Eramo's nonreaction. She'd expected
2 shock, disgust, and horror.

3 Now, on this score, I want to show you when you go to PTX
4 10 or Defendants' Exhibit 64, you will find these notes from
5 the interview that you've now seen quite a few times. Okay.
6 In the notebook it won't have that neat little August 16,
7 2014, up at the top. I did that.

8 Now, let's look at what the question was that Sabrina
9 posed.

10 "I just wondered if you saw the look on her face."

11 Okay? This is what is being sought here. This is what
12 is in the mind of the writer.

13 The question she asked: What was the look on her face
14 when you told her that someone else was shocked.

15 It was not about whether she then got pissed later on
16 about the fraternities. It is not then whether she held
17 concern for those victims, all right? It was just about what
18 was the look on her face.

19 This is something we've been saying since this case
20 began. This is a statement within this article that's about
21 her facial expression.

22 And Jackie says: It wasn't as shocked as you might
23 think. She was just mild. Oh, you have to have her come in.
24 She wasn't like, my God, that's crazy.

25 All right. Now, I'll suggest to you that it takes an

1 enormous stretch of literary imagination to turn nonreaction
2 in this context into the kind of global you-don't-do-
3 anything-for-sexual-assault-victims interpretation that Dean
4 Eramo attempts to put on this, all right?

5 This is the actual meaning: What was the look on her
6 face. And this is what gets described. It gets described by
7 Sabrina as a nonreaction.

8 The only question you have in your mind as to that was
9 that did she have a true factual basis on which to make that
10 statement.

11 More importantly, did she have a factual basis that she
12 believed to be true to make that statement. Did she hold
13 serious doubts as to the factual basis that she held in her
14 mind to make that statement.

15 And the answer is, of course she did not.

16 How do we know that? Because we know what the question
17 was that she asked.

18 She asked: What was the look on her face?

19 We know what the answer was that she was given: It
20 wasn't as shocked as you might think.

21 So that's why it ends up getting stated in the article as
22 she had expected shocked, disgust, or horror.

23 How do we know that she had expected shocked? Because
24 Jackie says it wasn't as shocked as you might think. She had
25 expected more shock, all right?

1 This is not even defamatory. Describing someone's face
2 when they respond to any kind of substantial issue is simply
3 not defamatory in this context.

4 It is almost impossible to read this and read it as
5 something that would subject Dean Eramo to ridicule or -- what
6 were the other words from defamation, any of you quick
7 studies? -- odious, you know, all those words that apply to
8 defamation meaning. This is simply not one of those.

9 So she stretches really long and hard to interpret this
10 in the manner in which she does and then to claim that it is
11 defamatory to her.

12 Now, what did we hear in testimony in this case?

13 Dean Eramo was asked: And it wasn't your practice to
14 react in some kind of aghast or shocked manner to revelations
15 by a student; isn't that correct?

16 No.

17 So she confirms that.

18 But I would certainly show care and concern for what they
19 were telling me about.

20 Of course she would. There's not been a single person in
21 this courtroom on our side for sure that's come into court and
22 suggested that Dean Eramo was anything other than caring and a
23 concerned person; that of course she would show this.

24 Now, what did Liz Garber-Paul find out?

25 She said -- the paragraph precedes it in this particular

1 statement: It was clearly attributed to Jackie; is that
2 correct?

3 What did you do to fact-check this statement?

4 Well, primarily I went through, you know, interaction
5 between Jackie and Dean Eramo, I went through Sabrina's notes,
6 and I went through it with Jackie.

7 So she confirmed these things through Sabrina's notes and
8 then through talking to Jackie as to whether they accurately
9 described it.

10 So we know for a fact that Rolling Stone, when it
11 approved the article to be published, its fact checker had a
12 reason -- had belief that the factual underpinnings for this
13 statement were true. There's no evidence to the contrary.

14 Now, as I told you, statement number 4 is gone. That's
15 good news, right? That would be another five, ten minutes.
16 Defamation by implication is gone.

17 And one of the things I wanted to tell you is I kind of
18 mentioned that the photo obviously is not a challenged
19 statement. And there was this implication in Mr. Clare's
20 closing where he said that the photographer -- I mean not the
21 photographer -- the artist, John Ritter, the illustrator, that
22 he always used these eyes like that for villains. Do y'all
23 remember Mr. Clare saying that? There's absolutely no
24 evidence in the record as to that.

25 There is evidence in the record that John Ritter uses

1 that style all the time because that is his style.

2 But here's one from an article -- remember they put this
3 in evidence -- "The Rape of Petty Officer Blumer"? This is
4 another issue, this is another article, that came in very
5 early on on the first day of Sabrina's testimony. And the
6 illustrator there was John Ritter.

7 Guess who the lady is on the front of the -- on the front
8 of the cover? That is Petty Officer Blumer. This is a
9 photograph of her that has been turned into an illustration by
10 this professional illustrator, all right?

11 Her eyes have been treated exactly the same way. They've
12 been made to be white, and she is not a villain. In this
13 story she is the rape victim. All right?

14 So this notion that you were supposed to draw that we
15 went out and hired somebody and said, do the villain eyes, is
16 nonsense. There is no evidence to support it, and there's no
17 evidence that Mr. Ritter does anything other than this type of
18 style.

19 And if you notice, it's exactly the same. There's the
20 bright color, there's the -- all the things that were
21 described in that video deposition that you listened to. I
22 just wanted to make that a point.

23 Another thing I wanted to tell you is one of the things
24 that Mr. Clare was talking about on opening, remember "the
25 critics say" kind of part of the article? Do y'all remember

1 there was a section we've heard about a number of times:

2 Critics say that, you know, the university is more interested
3 in protecting itself than it is in the interest of students.

4 Critics say, critics say, critics say. All right?

5 And then there's about five critics: Laura Dunn, S.
6 Daniel Carter, Wendy Murphy, you know, on and on, and they get
7 quoted right there. And Mr. Clare was complaining about that.

8 Those are not challenged statements. All right? Those
9 are not challenged statements, okay?

10 There are other parts of the article that say things
11 like -- remember the Stacy story? Can you all remember that
12 one from when it was read to you 12 days ago?

13 The Stacy story was a young lady who taught -- who we got
14 her file. She actually gave her file to Sabrina, her whole
15 file. And this was a situation where she came in and she
16 said, I was suppressed, I mean, affirmatively suppressed. Not
17 suppressed as a result of the system, not suppressed as a side
18 effect of victim choice, but I was specifically told by the
19 dean's office, don't do this, you know, it won't be good for
20 you. You need to worry about your mental health, all right?
21 And that's all in the article, that the dean's office
22 affirmatively discouraged her.

23 All right? We know for a fact and the testimony in this
24 case Dean Eramo was involved in that case. She was involved
25 up until a certain point, and that I believe came in as

1 evidence.

2 Now, she doesn't challenge that statement. That is not a
3 challenged statement. This is a statement in the article
4 where it says the dean's office affirmatively discouraged this
5 young woman from going forward. That's exactly what she told
6 Sabrina. She doesn't challenge it. Those are facts you ought
7 to consider.

8 What she challenges are these three limited, very easy to
9 deal with, in my opinion, statements.

10 Now, post-article statements. I'm going to go back to
11 that defamation. This is for people like me who may have
12 forgotten.

13 When you think about these post-article statements, think
14 about all these things that Ms. Eramo has to prove. She, in
15 order to make her case, was required to come -- and we don't
16 have to prove a thing as defendants, not one thing. Every
17 single burden is on the plaintiff when they walk into a
18 courtroom. They have to come in and present evidence on each
19 one of these elements that you see here, so all five there.

20 And this one, by the way, doesn't include the actual
21 malice. That would be six in this one.

22 So one of the things that she has to prove is that the
23 statement was seen, read, or heard by someone other than her.

24 What evidence have you heard in this case from anybody
25 who came in and said, oh, yeah, I was listening to the Lehrer

1 podcast that day? Zero. Zero. She has not met that burden.

2 She didn't bring a witness in. She brought witnesses in
3 who said they read the article and that they thought it was
4 unfair and that they thought she was portrayed unfairly.
5 Remember those witnesses?

6 She talked about e-mails that she received that dealt
7 with the article. She didn't bring in an e-mail that said,
8 hey, I was listening to the Lehrer show and I thought badly of
9 you, it really defamed you and your reputation, did she? Not
10 one. You can't find one document and you can't find one
11 witness, because she didn't come in and prove that.

12 So as to those statements, as you sit there, you don't
13 have one single clue whether the statement was seen, read, or
14 heard by someone other than the plaintiff, but you do know for
15 certain that the plaintiff didn't come in and tell you that
16 there was. She did not come in and produce that witness.

17 The third thing as to those statements, she has to prove
18 that they are of and concerning her, Nicole Eramo. Search
19 those statements. It's all administration, administration,
20 school, school, school, administration.

21 There is only one exception to that, and it is on page 12
22 of the Slate broadcast. And that's where one of the host
23 ladies says: In your article, you mention this Dean Eramo and
24 the relationship with the students and the university. Can
25 you tell us generally how the students get along with the

1 university?

2 So she mentions Dean Eramo. And nowhere does Sabrina
3 ever mention Dean Eramo.

4 By the way, on all those statements, when you look at
5 those verdict forms that Mr. Clare mentioned, you will notice
6 that Rolling Stone is not a party to those. Rolling Stone did
7 not make those statements. Wenner did not make those
8 statements. So those are only with regard to Sabrina. The
9 Lehrer and the Slate, only with regard to Sabrina. All right?

10 Opposite is true for the press release. Once you get to
11 statement number 11, the press release, that's all on Rolling
12 Stone. So that's just something that you'll have to watch for
13 in those statements.

14 That the statement is false and defamatory. In order to
15 prove her case on these post-article statements, she would
16 have to come in and establish that the statements said within
17 them are in fact false and that they were defamatory, again
18 meaning that it subjected her to ridicule and made her odious
19 and an object of scorn.

20 All right. And finally, that the plaintiff was damaged
21 as a result of the statement. This is an element of her
22 liability claim. She has to prove that that particular
23 statement caused her damage.

24 There is zero evidence in this record that any of the
25 post-article statements caused her damage.

1 Now, she did come in and say that she was incredibly
2 offended by the article, that she took it very personally,
3 that others around her saw that it was negative toward her and
4 that they expressed that.

5 Interestingly enough, not one of those people said that
6 it changed their opinion about her. Not one of those people
7 said that they thought worse of her afterwards.

8 Do you remember that? They were each asked that: Did it
9 change your view?

10 But all of that was with regard to the article. Not one
11 single shred of evidence on damage as a result of these
12 post-article statements.

13 Now, what are they again? That's the last time you'll
14 ever get to see them again, except they do get repeated in the
15 jury instructions. All right?

16 The first one is Lehrer. Jackie was kind of brushed off
17 by her friends and by the administration. And eventually,
18 when she did report it to the administration, the
19 administration did nothing about -- they -- they, notice the
20 pronoun "they," not "she" -- they did nothing with the
21 information. And they even continued to do nothing when she
22 eventually told them that she had become aware of two other
23 women who were also gang raped at the same fraternity.

24 Every single time you hear the words "doing nothing" in
25 these post-article statements, it's all about campus safety.

1 That has a meaning that is pretty easy to follow. They did
2 nothing to investigate or warn. So that is what it means.

3 Obviously they did things to comfort Jackie, and that's
4 not the point. The point, is what did they do to investigate
5 and attend to campus safety. Now -- and that is what the
6 article takes issue with and criticizes.

7 Let's see. The same is also meant anytime you hear the
8 word "indifference" in these statements, the post-article
9 statements. Indifference means indifference to campus safety
10 concerns. And that's a big thing, and we think a very
11 legitimate criticism of how the University of Virginia was
12 handling such things at that time.

13 And I will point to you in the articles, the only "doing
14 nothing" phrase quote in the article is: So profound was the
15 students' faith in the administration, that although they were
16 appalled by Jackie's story, no one voiced questions about
17 UVa's strategy of doing nothing to warn the campus of gang
18 rape allegations.

19 That's what Sabrina meant by doing nothing.

20 Now, statement number 6 is the Slate podcast. It's the
21 same exact thing: continued to do nothing. It's exactly the
22 same concept as Lehrer.

23 And notice the words. You do not find the word "Eramo."
24 You find the university did nothing, and they continued to do
25 nothing. Again, nothing saying Dean Eramo's -- Dean Eramo's

1 name.

2 And by the way, this is not something that's appended to
3 the article. You know, they say, well, Dean Eramo's name gets
4 mentioned in the article a whole lot. Well, these are not
5 appended to the article. These -- the Lehrer show is a radio
6 show in New York City, and Slate is a podcast, so the article
7 has nothing to do with it.

8 Slate number 9. Also did nothing. This is a did nothing
9 thing. The administration, that doing nothing is a fine
10 option. The administration's kind of ethos. No mention of
11 anything with regard to Dean Eramo.

12 Now, there is no doubt, by the way, on this one. This
13 does get into victim choice because she's talking about how
14 there's this atmosphere on campus that, you know, taking care
15 of your own mental health is good enough, which of course is
16 the first step. I mean, that's obvious. But that they --
17 they have all this bystander support.

18 But generally, again, I mean, taking into account the
19 statistics, you have 38 reports and only nine go forward; that
20 they are clearly in the business -- of those 38, the ones that
21 didn't go, they affirm each other in their decisions.

22 Do you remember yesterday listening to that September 12
23 conversation where Jackie and Alex and Connor -- poor guy, he
24 couldn't get a word in edgewise, could he? Did y'all hear it?
25 I mean, he tried once or twice, but he got the big smack-down.

1 So we didn't hear much from Connor, but we heard an awful lot
2 from Jackie and Alex.

3 And at one point they just kind of went off on, you know,
4 how important it was to tell that victim -- because there had
5 been two rapes that had been reported to them just that week
6 that these two girls had been called on. And they said, well,
7 you tell her it's her choice, it's her choice, and nobody can
8 make that decision for her. I mean, they were repeating this
9 almost like it was a religious principle.

10 And so there's no doubt that the students bought into it,
11 and there's no doubt that the university also bought into it
12 because we have victim choice. We've confirmed it with Teresa
13 Sullivan. It is that each of these options, including doing
14 nothing, is presented neutrally.

15 And we also know that there's a lot of good reasons for
16 that. We had witnesses come in and say, of course it's a good
17 reason to do that. You want to empower this woman. She's
18 just been victimized. She's just been made to feel powerless
19 and helpless and out of control. This allows her to be in
20 charge of that.

21 Very good point. That's a very good point.

22 But when given all those choices -- and this is the
23 thesis of the article, thesis number 2 of the article, which
24 is, yes, true, it has that laudable goal. But at the end of
25 the day, going forward with rape charges, whether it's in a

1 formal complaint or whether it's with the police, is nasty
2 business. No one really wants to go through that.

3 Rape is one of those crimes where if a rape victim is
4 going to report it and go to trial, they're literally doing it
5 for the next person. They're not doing it for themselves
6 because there's nothing in it for them.

7 Everything about their life is going to be questioned.
8 What were you wearing? You know, we heard these girls talking
9 about: What were you wearing? Why did you go there in the
10 first place? Were you drinking? Was alcohol involved? All
11 these questions.

12 And you hear it every time you hear the news about
13 another allegation of rape. You know the next day you're
14 going to hear a lawyer for so and so said it was entirely
15 consensual, you know? And so it's going to be a nightmare for
16 anyone who chooses that.

17 And so from Sabrina and Rolling Stone's standpoint, when
18 you do have these situations that involve serious campus
19 safety, it requires a little bit more than neutrality. And
20 honestly, I got the impression Dean Eramo agrees, or she
21 certainly agreed by 2014, that you have to give them a sort of
22 a kick in the pants and say, come on, let's do something.

23 You particularly have to give them a kick in the pants if
24 the administration is falling down on its job of doing any
25 investigation in the meantime, because you have placed this

1 traumatized victim -- she's having to make that choice. Sure
2 she wants the comfort of not doing anything. Who wouldn't?
3 But sure she's also feeling guilty about what about that next
4 young woman? What about her?

5 So there's a conflict there. If she makes her choice the
6 way she wants to make it, then people are not safe.

7 This is a unique situation because it's a university,
8 where the university can actually do something and honor the
9 young woman's decision not to go forward. They could have
10 done any number of things.

11 But starting with ones that we will go through as part of
12 this outline that -- I'm now way out of control. I don't know
13 where it is. But the -- they could have done things, and the
14 most significant one was go to IM-Rec.

15 Remember the IM-Rec records? The rapist, the guy who was
16 the ringleader, worked at IM-Rec with Jackie? He was also a
17 member of a fraternity. And he -- the university, without any
18 trouble, could have gone to the IM-Rec and gotten a list of
19 people that worked with Jackie. They could have figured out
20 what pool or whatever Jackie was working at, and they could
21 have gotten a list of all the males that worked there with
22 her.

23 Because she had told right off the bat, that's who
24 organized this. They didn't do it. They never did that
25 investigation.

1 So doing no investigation, Sabrina comes in and sees
2 that, that they're not doing an investigation, and she says,
3 okay, well, in this situation for sure this victim choice
4 doesn't seem to be working. Because of course Jackie feels
5 more comfortable not going to forward, but meanwhile the
6 school is not safe.

7 That's the conflict, and that's the tension that is
8 presented in the article.

9 And I just got off on a long tangent. Sorry about that,
10 but it's a little bit off of where I was going to go. But
11 that is the criticism of this, and there is no doubt that they
12 believed in it.

13 Let me tell you there is also no doubt that Dean Eramo
14 believed in it. She was a big, big proponent of this victim
15 choice concept. And that victim choice concept at its core
16 says, unless the victim who has made the report completely
17 agrees, you do not do any investigation. And there was a big
18 dispute on this.

19 In Sabrina's notes, the big binder that you're going to
20 have, PTX 10 or Defendants' Exhibit 64, in that document you
21 will find this at page 4333. These are notes from a
22 conversation that Sabrina had with Emily Renda.

23 You recall Emily Renda. We watched her video deposition.
24 And as Mr. Clare said, a very impressive, very impressive
25 witness. She seemed very sharp.

1 She said to Sabrina these words: I've been concerned for
2 a while that Catherine Lhamon -- that's the head of the OCR --
3 and ORC tends to be on the side of move forward with an
4 investigation, regardless of what the victim wants.

5 That's one of the points of the article. That's the
6 point of the article.

7 And Dean Eramo almost ran off, she was so upset. She
8 said, I'd rather lose my job than force someone to do that.

9 This is what Sabrina was told by an employee of the
10 university who had been at this conference with Dean Eramo
11 on -- in the summer. It was in July is when the conference
12 was, and it was at Dartmouth. But she was told this on
13 September 11.

14 So -- and the point, the point of that, is simply that
15 Dean Eramo and the administration definitely bought into that.

16 Now, there was a statement -- now we're at statement
17 number 10. This was Sabrina to the Washington Post, where she
18 says the UVa administration chose not to act on her
19 allegations in any way. That is the overarching point of the
20 article. That is the story. The culture that greeted her and
21 so many other UVa women I interviewed who came forward with
22 allegations, only to be met with indifference.

23 Indifference again, in this context, means indifference
24 to public safety, indifference to that issue which is at the
25 core of the article.

1 Now, I jumped out of order because -- for a reason.
2 Statement number 7 does not have a did nothing component, but
3 it's got so many components I dread going through it with you.

4 Statement number 7 starts with a very clear indication
5 that Sabrina is speaking from her opinion. You see where it
6 says "I think," all right? That's a clear indicator to
7 readers that the author is talking about her opinion.

8 And then -- but let's note what it says: The
9 administration doesn't really treat rape as a crime, as a
10 violent crime.

11 That again is the administration.

12 They would seek to suppress something like this.

13 Suppress in that context means suppress the
14 investigation, because that's really what they did.

15 Not only did they not report it to the police, but I
16 really feel -- again, pure opinion -- she was sort of
17 discouraged from moving this forward.

18 Now, as to this issue, treat rape as a crime, you
19 remember the WUVA interview that we played? It was a
20 videotape where Dean Eramo gave the interview to the student
21 TV station? And she said on there: Sometimes the victim is
22 just wanting to look into the eyes of the other person and
23 say, you've wronged me -- do you all remember that? -- in some
24 way and is satisfied with the fact that they admit they did
25 something wrong.

1 That had been seen by Sabrina. That was seen by Liz
2 Garber-Paul. That was seen in its entirety by Sean. That,
3 right there, is what was in the mind of Rolling Stone and
4 Sabrina when Sabrina said that they don't seem to treat rape
5 as a crime.

6 Sabrina was troubled by the fact that the administration
7 did not investigate the allegations, and she formed the -- I
8 guess she formed the opinion that the administration simply
9 didn't see this situation the way she did, as a grave matter
10 of public safety.

11 Obviously she reasoned if they did, they would do
12 something about it.

13 Now, this is a concept that gets hammered home in the
14 article. If I have time, I'll go through some of those with
15 you. But you remember how the article ends where it says --
16 it's about Hannah Graham's death, okay?

17 To put this in context, guys, Sabrina was out with these
18 girls on September 11 and September 12. She was walking down
19 Rugby Road. She was on the Mall.

20 September 13 is when Hannah Graham went missing.

21 Sabrina leaves Charlottesville. She wakes up the next
22 morning in Pennsylvania, and on the news it's some young lady
23 disappeared right from where she was. That made it a very
24 significant issue to her, not that it wasn't significant to
25 everybody. But here she is writing a story about the safety

1 concerns of how to handle sexual assault, and Hannah Graham
2 goes missing. It's a very, very key fact.

3 Now, I suppose the one thing we should talk about with
4 regard to this is about where they say -- she says she didn't
5 take her to the police, all right? If you go back to the
6 article, they -- "not only did they not report it to the
7 police," okay?

8 Now, my goodness, we've had a lot of evidence in this
9 case about the police. And just to frame those issues,
10 Ms. Eramo takes the position that she arranged for Jackie to
11 go to the police. She, because she was there, in her mind,
12 knows that they discussed the fact that Jackie had in fact
13 been sexually assaulted two years earlier at the Phi Psi
14 house, all right?

15 That is nowhere apparent in the records that Sabrina had,
16 the records that Sabrina was able to obtain.

17 This, however, was one that Sabrina was able to obtain,
18 and this is the -- this is the e-mail that is Plaintiff's
19 Trial Exhibit 18. This is the one where Ms. Eramo writes to
20 Jackie and says, thanks for coming in. I'm sorry, the CPD --
21 the Charlottesville Police Department officer -- was a little
22 aggressive about investigating.

23 Recall, this is about the bottle incident. It's about
24 the bottle incident.

25 I know it was stressful, and I truly apologize. That

1 said, it may be worth it to at least have them check the video
2 on the Corner.

3 Why on the Corner? Because that's where the bottle
4 incident happened.

5 And then if we can get good video and check photos of
6 them from the FSL rosters, we might be able to find them
7 without having to go to the fraternities. Fraternities.
8 Right? Note that it doesn't say the fraternity, like Phi Psi.

9 And the reason was, at this point in time, Jackie had
10 been speaking out publicly as a rape activist on campus
11 against multiple fraternities. And I'll show you that in just
12 a minute in the notes. But I think it's very significant that
13 it says fraternities.

14 If the individuals are caught up in the legal system,
15 they and their brothers will have a strong disincentive from
16 retaliating against you.

17 You may recall that when she was examining Sabrina about
18 this, Ms. Locke made it seem like there's only one reasonable
19 interpretation in the world of that, and that means
20 retaliating for your sexual assault. That's nonsense.

21 The only reasonable way to read this is retaliating
22 against you if you choose to press criminal charges for the
23 bottle incident.

24 Very important to Sabrina is the next line: Never
25 forget, however, that it is your choice. "Your" in all caps.

1 That is one of the key points that form the basis for the
2 article, was that Sabrina was witnessing this repeat of the
3 mantra of victim choice. It's your choice, all caps. And
4 this is in response to the bottle incident.

5 All right. I told you I would show you this. This is
6 where Jackie reported this bottle incident to Dean Eramo, all
7 right, the one we've just heard about.

8 One thing I think is very important and I'm going to
9 direct you to the top of this. Do you see where it says IR
10 number? Do y'all see that? That is the incident report
11 number. This is a new number. This is different than
12 Jackie's sexual assault incident number.

13 Her sexual assault incident number has a 2013. This is
14 00396-2014. You can find this at PTX 9.

15 PTX 9, by the way, when you go back, that's just
16 Plaintiff's Trial Tab 9. That's called the Advocate system,
17 and it's all the notes that anyone involved with UVA puts into
18 their system, and it's all right there. So if you go to that
19 page, you will definitely see this incident report.

20 And by the way, for you taking notes -- sorry it's not on
21 this slide -- this is at page 215. There are lots and lots of
22 zeroes followed by 215. But you have a brand new incident
23 number.

24 It also says here that the student is a prior victim of
25 sexual assault and a member of One Less. In this capacity,

1 she has spoken openly about concerns regarding fraternities,
2 including Phi Psi and SERP. The student groups that are
3 involved, Phi Kappa Psi and SERP.

4 This is conclusive evidence. If Jackie were telling
5 anyone that she had been assaulted with a bottle because of
6 her rape at Phi Psi, we would not be talking about SERP. But
7 they were both talking about SERP. And that's who gets
8 reported in this.

9 Now, on -- let's see what day this was. This was April
10 21, April 21, 2014. This is Plaintiff's Trial Exhibit 107. I
11 don't think it got a lot of air time in this trial, but these
12 are the handwritten notes by Dean Eramo on April 21, 2014,
13 about the bottle incident.

14 Do you see the bottom? Doesn't know which frat they were
15 talking about. Because they had said, SERP has also had
16 issues with people -- So this is Jackie talking with Dean
17 Eramo -- has also had issues with people. Knows of eight
18 women who may have been roofied and assaulted at SERP. Club
19 was going to have a function there and offered to have it free
20 there. Was concerned about their reputation and having
21 functions there. President of club -- and it's redacted to
22 keep her name secret -- named her. Club e-mailed and named
23 her. Something, probably a bottle. Doesn't know which frat
24 they were talking about.

25 So Jackie made it very clear that she did not know. It

1 could have been one of multiples.

2 There are similar -- by the way, guys, there are many
3 similar examples in there. I'll just for the record, so you
4 can go back and find these if you want, Plaintiff's Trial
5 Exhibit 9 is another -- there's an e-mail from Eramo to James
6 Mooney that has the same content, and there is another from --
7 Advocate entry that does the same. We're going to skip those.

8 Now, what did Sabrina say to -- I'm sorry. What did
9 Jackie say to Sabrina about this? And that's where we go back
10 again to Plaintiff's Trial Exhibit 10 or Defendants' Exhibit
11 64. If you go to page 4168 in that exhibit, you will see
12 these notes.

13 Sigma Phi, I just know it as SERP. She's telling here
14 it's about SERP. That's where people are roofied and raped.
15 I told my friends who are first-years not to go there, and I
16 was just very outspoken about it.

17 And then she goes on to describe how these boys had
18 thrown something at her and she had been cut.

19 So to come into court and suggest to you that somehow
20 this police report is, by definition, only an idiot wouldn't
21 know that it was about the sexual assault, is just a false
22 impression to give to you.

23 Sabrina talked to Jackie about it. Jackie said it was
24 about her advocacy. Jackie talked to Dean Eramo about it, and
25 Jackie told Dean Eramo it was about her advocacy. It was

1 about two fraternities, potentially.

2 Jackie made the exact same statements to the police
3 officers that were involved.

4 Now, what else did Sabrina do? She did a FOIA request.
5 Remember there was -- that she wanted to confirm whether in
6 fact Jackie had made a report of this, and the City of
7 Charlottesville responded. They told her it was a 2014
8 aggravated assault in the Corner and that there was a
9 laceration reported as a result of the assault.

10 Sabrina did her job.

11 And I think you heard that why she said it wasn't really
12 relevant to the story line. It was a totally separate
13 assault. That's why it didn't make it into the final cut of
14 the article. It started out in the first draft as 13 or
15 14,000 pages [sic], and it ended up getting cut to nine. That
16 is one of the things that got cut. There's nothing nefarious
17 about it.

18 Now, statement number 8: She's particularly afraid of
19 Drew. And this is where she's talking about what would it
20 take to get Jackie to actually file a police report or proceed
21 forward with a formal complaint.

22 And she says, I think it would take a great deal of
23 support for her to move forward into any of these options.
24 But notice how she begins it: "I just think." Again, pure
25 opinion.

1 I just think it would require a great deal of support for
2 her to moved forward into any of these options to resolve her
3 case, something that's been completely absent.

4 From Sabrina's standpoint, from her point of view, it was
5 absent, realizing that it takes a tremendous amount of more
6 than support even, just affirmatively pushing someone to go
7 forward in that context.

8 Now, statement number 11, this is the Rolling Stone
9 statement. This is the one -- which, by the way, Dean Eramo
10 said not one word about this statement in her testimony,
11 absolutely nothing. The same is true for a couple of the
12 other ones. But not one word did she even say. She didn't
13 say that anything in it was false. She obviously didn't say
14 she had been damaged by it. She didn't say she had read it.
15 So she made absolutely no comment about this statement from
16 the witness stand.

17 This is the press release that Rolling Stone issued and
18 that was ultimately -- primarily issued to the Washington Post
19 on December 1. And it's the one that talks about the story
20 and tries to describe it.

21 At this point, Rolling Stone was in fact defending the
22 story and saying that it was proud to have given it air time.
23 And they describe it.

24 Well, what Dean Eramo apparently takes issue with is the
25 subsequent ordeal she experienced at the hands of the

1 university administrators in her attempts to work her way
2 through the trauma of that evening.

3 Again, Dean Eramo did not even comment on this press
4 release in the evidence in this case.

5 But to give some degree of explanation for that -- and I
6 think we discussed it with Sean while he was on the witness
7 stand and also with Sabrina. The ordeal concept is sort of
8 the flip side of that coin of victim choice.

9 And I talked to you about how there is this -- there's
10 the comforting part of victim choice and there's the
11 empowering part of victim choice. But when you then tell the
12 same person you're trying to comfort and empower that in order
13 to do anything for campus safety with these two other alleged
14 gang rapes at Phi Psi, that she has to go out and get those
15 girls to come in and that all three of them have to agree to
16 come in and that it's kind of her responsibility -- all right?
17 So that's the flip side. That's the not so kind, not so
18 gentle, side of victim choice.

19 Bear in mind that the university's not going to do an
20 investigation. She has to rely on these traumatized people to
21 come forward.

22 Pushing somebody in that sense was seen by Rolling Stone
23 as an ordeal, and that's what that's about. They had a
24 reasonable basis for it.

25 Now, I want to talk to you briefly about the

1 republication, that issue.

2 Mr. Clare said that Rolling Stone and Sabrina republished
3 the three statements in the article when they posted the
4 December 5 note, that apology to our readers. This is a
5 pretty easy issue. We think there's not a lot -- no dispute
6 on the facts.

7 We know that Sabrina lost faith in the article on
8 December 5th. We know she lost faith in any statement made by
9 Jackie. We know that Rolling Stone did the exact same thing.
10 This occurred in the middle of the night, 1:54 a.m. We
11 watched that.

12 So what Rolling Stone did was they put a big warning on
13 the top of the article. That's that note to our reader, and
14 there you see it.

15 The judge will instruct you in this case that -- oh, I'm
16 sorry, I needed to push this button again. Yes.

17 This is what it actually says in the retraction: In the
18 face of new information, there now appear to be discrepancies
19 in Jackie's account, and we have come to the conclusion that
20 our trust in her was misplaced. We are taking this seriously
21 and apologize to anyone who was affected by the story.

22 You heard every single witness come in and testify that
23 they intended it, Rolling Stone intended it, everyone intended
24 it, as notice to the world that everything attributed in this
25 article to Jackie was not trustworthy. Some of it might be

1 true, some of it might not, but we know this: We can't put
2 our name behind it, and we can't say that it's true or false,
3 and we don't even believe that it's true. We don't know.

4 And that was what the point of this was, and this was a
5 huge black eye for Rolling Stone to have to do this.

6 Now, the judge will instruct you that -- on
7 republication. That is one of the jury instructions you will
8 have in here.

9 In order to find the defendants republished the original
10 article on December 5, 2014, you must find that by adding the
11 editor's note to the top of the online article, defendants
12 affirmatively reiterated the content of any allegedly false
13 and defamatory statements with an intent to reach a new
14 audience. That's what they have to prove to you.

15 In other words, the article with the reader's note means
16 we are affirmatively reiterating those statements that Jackie
17 made.

18 Did you all follow? You can't get there from here. And
19 it's obviously absurd, right, because the reader's note says,
20 we misplaced our trust in Jackie. We don't have confidence in
21 Jackie. Right?

22 Why is it that the plaintiff is arguing this?

23 Because they know they have no actual malice at any point
24 up until December 5th. They know it. They know they can't
25 prove that case. They know that the record that they have put

1 before you, no reasonable juror would believe that Sabrina and
2 Sean and Liz published the Rolling Stone article, "A Rape On
3 Campus," believing it to be false. They know that no
4 reasonable juror, like you, would believe that they held
5 serious doubts.

6 So that is why they have had to come up with this inane
7 theory. Because as of December 5, guess what they know? I
8 told you. We've got serious doubts, okay?

9 Remember my question to you earlier this afternoon? What
10 does serious doubts look like? It looks like that e-mail that
11 Sabrina wrote. And it sounds like that voicemail message.
12 Okay?

13 And that's why they're doing it. Because they want you
14 to believe that somehow we affirmatively reiterated these --
15 the content of this article to Jackie. You cannot
16 affirmatively reiterate and say "we misplaced our trust" at
17 the same time, all right?

18 Second prong they have to prove. They have to prove that
19 we did it with an intent to reach a new audience. All right?

20 Remember I asked Sean that? Were you doing this because
21 you wanted somebody to go out and look at it?

22 I asked Sabrina the same thing.

23 Sabrina said she had never been back to that website.
24 She wants to forget it. She wants everyone to forget it.
25 It's the worst thing that's ever happened to Rolling Stone

1 professionally. It's the worst thing that's ever happened to
2 Sabrina professionally.

3 They were not trying to reach a new audience. They were
4 doing best -- their best to make sure that what they did do
5 was on the official website of Rolling Stone; that they leave
6 up this disclaimer to the world, this warning, so when someone
7 comes and tries to find the official copy, not some bootleg
8 copy but the official one, that they will know that it has
9 this serious warning. It's plain as day. That was the point.

10 We are not proud of that article. We're not proud of
11 recounting Jackie's story. We are proud of the hard work that
12 Sabrina put into it. She did a tremendous amount of work on
13 this, and she got a great deal of it right. But the Jackie
14 story capsized the whole book.

15 Now, I want to give you another context. Remember
16 Columbia Journalism? And you've got to remember this. I know
17 I asked Sean about it, and I think I asked Sabrina about it.
18 Remember how -- what the finding was in Columbia Journalism?

19 They said that the December 5 note to readers effectively
20 retracted -- that's on page 10. By the way, this is
21 Plaintiff's Trial Exhibit 139, just again.

22 On page 57, they say again, it effectively withdrew.

23 And on page 70, they call it a straight-out retraction.

24 That's all talking about the December 5 note to reader.

25 So as you go through those, you have to consider whether

1 in fact we had these intentions to say -- there it was --
2 affirmatively reiterate with the intent to reach a new
3 audience of each one of these statements: the rape school,
4 the sharing her story, and the nonreaction.

5 Your Honor, I need to switch gears for just a second.
6 Would now be a good time for just a short break?

7 THE COURT: Yes, sir, I think everyone would enjoy
8 another short break.

9 So, ladies and gentlemen, we'll excuse you for a few
10 moments, again with the understanding that you not discuss the
11 case with one another nor permit anyone to discuss it with
12 you.

13 Let's plan to return at about 4:30.

14 Ask the marshal declare the Court in recess.

15 (A short recess was taken at 4:20 p.m.)

16 (The jury is present in Open Court at 4:34 p.m.)

17 THE COURT: All 10 jurors are back in their places,
18 ready to continue with defendants' closing argument.

19 MR. SEXTON: Okay. I was just about to move on from
20 this issue of retraction. I think we had beat that dead horse
21 about hard enough. But I wanted to -- there were a few things
22 I had intended to say but didn't. A few more.

23 In the testimony in this case, you heard several
24 witnesses, plaintiff's witnesses, who referred to the December
25 5th note to editors as a retraction. That's how it was

1 perceived in Charlottesville. As of that date, the article
2 was debunked.

3 There had been this big furor and tumult going up to
4 December 5th, and it was like little bits of pieces coming out
5 here and there in that couple of days right before December
6 5th. And as of December 5th, we issue our retraction. The
7 Washington Post issues its very significant criticism of some
8 of the factual underpinnings of Jackie's story.

9 And so Emily Renda called it a retraction, Alex Pinkleton
10 called it a retraction, and Brian Head called it a retraction.

11 Now, one of the key points -- and I had mentioned it
12 earlier, but I want to reiterate it here. As to this issue
13 with attribution, on those three statements which are at issue
14 in this case and which are what's being sued on, there's no
15 doubt they are attributed to Jackie. Jackie says. Jackie
16 saw. So it's all coming from the mouth of Jackie.

17 So if we are saying in the note to readers that we have
18 lost faith in Jackie, it should be very clear to any reader
19 that we have lost faith in these statements.

20 So that's -- that is very -- in a nutshell.

21 Now, I don't want to spend too much time on this because
22 it -- A, because it takes -- it's a lot of pages in this
23 outline, and the clock is just not my friend.

24 But I want to tell you that there is plenty of evidence
25 that establishes that Sabrina was not stupid or foolish in

1 trusting Jackie. She might have been foolish in letting
2 Jackie talk her out of pressing for Drew, but she did it for
3 good reasons, all right? She did it because she thought that
4 that was traumatizing Jackie. And who knows, maybe it was.

5 Sabrina was foolish, perhaps, could be criticized for not
6 pressing harder on the three friends, although it does take a
7 good degree of speculation to determine what those friends
8 would have said to her that might have derailed the entire
9 story.

10 Let me put it to you this way: Jackie was good at coming
11 up with explanations for everything, so they -- it is somewhat
12 speculative. But of course she feels bad for not doing that.

13 But as far as just the general notion of here's this
14 young person, she's telling you this story, believe her, don't
15 believe her, all right? Does she sound credible or not
16 credible?

17 Sabrina was very reasonable in believing this young
18 lady's story.

19 First of all, she was obviously open about talking. She
20 was open about telling her story. You heard her demeanor.
21 She was very forthcoming. She has a very easy demeanor. She
22 gives these incredibly detailed answers on some things, and on
23 some things she's purpose -- you know, appropriately
24 circumspect and not throwing out huge details.

25 Think about the example. Do you remember Becky, when she

1 is describing Becky in the September 11 video? She's like,
2 oh, yeah, she has this cute nose. Can you all remember that?
3 She had a cute nose and she had kind of like a raspy voice,
4 you know, not like a smoker's voice but cute.

5 And she goes into this crazy detail, and she talked like
6 Spock, and she was very formal. And she said, you know, they
7 summoned me. And she's throwing in all these details. This
8 young woman was very good at telling this story.

9 So, A, she was extremely good.

10 Let's also don't forget that that at the time that
11 Sabrina was introduced to Jackie, how did that happen? Emily
12 Renda, who gets my vote as -- except for my client, okay?
13 Except for my client, she gets my vote as the most impressive
14 witness you heard in this trial.

15 Do y'all remember the videotape of the young woman who is
16 now at Berkeley Law School? She is the one who introduces
17 Jackie and Sabrina.

18 So when that happens, Emily Renda has already testified
19 before Congress, something that Sabrina knows. Emily Renda
20 has testified about Jackie's story before Congress, something
21 Sabrina knows because she gets a copy of the Congressional
22 testimony. It's one of the exhibits in this record.

23 At that point in time, Emily Renda has not only testified
24 about the rape but has testified about how hateful Jackie's
25 friends were when she told them her story on the campus of

1 UVa. That's -- she had done that.

2 Now, we also note that before introducing Jackie and
3 Sabrina, Emily Renda sent an e-mail to Dean Eramo saying, I've
4 been asked to give a few names of survivors. Would -- do you
5 think it would be a good idea for me to give them Jackie's
6 name? No push-back at all from the university.

7 So now put yourself there, and you're going to say, well,
8 sitting there, it sure does sound like the University of
9 Virginia is saying this is a good person for you to talk to.
10 It's one of their employees.

11 And they mocked this young woman by calling her a camp
12 counselor. She was working in Pat Lampkin's office at the
13 University of Virginia. She had a significant job.

14 Yes, as part of that, Dean Eramo had these summer camps
15 for a couple of weeks and she helped with that, but she was
16 not a camp counselor. You can tell that. That is a woman who
17 is going places, and she was a -- she was seen by Sabrina as
18 somebody very reliable. So introduced by that person.

19 Now, what else happened at that introduction?

20 Emily told her there were two other rapes at Phi Psi that
21 had been reported, okay? So not only did she tell her about
22 Jackie, she tells her there's two other rapes at Phi Psi. She
23 tells her that the dean is passionate about Phi Psi and
24 bringing some punitive action to that fraternity.

25 But at the same time she says, but we're also a little

1 reluctant because they're very rich and powerful. Remember
2 that one? That's...

3 So, again, in this use of Sabrina, she says, well, that
4 seems kind of ambivalent. Is UVA the kind of place where
5 power and money is all that matters?

6 It's a fair conclusion to draw from that. We'd like to
7 do something but we won't.

8 But more importantly, there are two other rapes that have
9 been reported, gang rapes, at that particular fraternity,
10 which is an incredible coincidence.

11 The CJR report, by the way, found it to be very
12 significant that Renda was the one who made this introduction.
13 They looked at it from the reporter's point of view and said,
14 that was significant.

15 And, you know, you look back on the trail and you say,
16 well, if I hadn't -- if I had met her somehow otherwise -- and
17 I think there's a part of us -- we all like to look at this,
18 and I did when I first got involved in this case, look at it
19 and say, she wouldn't have fooled me. I think that's an
20 inherent temptation, that we want to look at this and say,
21 would she have fooled me.

22 And I got through that 911 audio and I was like, she got
23 me. Because -- but I think all of us have that temptation to
24 say, would she or would she not have fooled you. But that's
25 human nature, and it's all hindsight at this point.

1 Sabrina lived it in realtime. Sabrina lived it as it
2 unfolded, one little bit at a time.

3 We cannot properly judge her in whether that was
4 coulda-shoulda-woulda, because we have the benefit of knowing
5 everything the way it -- how the story ends, right? So it's
6 completely different.

7 So we heard that significant interview. We heard the one
8 on September 12. She has looked into the eyes of this woman
9 and heard her story. The woman had a tattoo put on her body
10 to commemorate September 28, 2012.

11 Remember that line of questioning?

12 Who in the world would do that if it wasn't true?

13 She showed Sabrina her tattoo. She showed Sabrina scars
14 that were on her wrists. Remember on September 11 the
15 lighting was bad; she couldn't see them. She saw them on
16 September 12.

17 She understood that Jackie had scars on her back that had
18 faded. This made sense to Sabrina. It was not the be-all,
19 end-all.

20 So Rachel Soltis, another significant fact. Rachel
21 Soltis, her roommate from freshman year, said, yes, she got
22 depressed during this time period and confirmed all that stuff
23 that had been said. So that was very confirmatory to Sabrina.
24 And Rachel was very forthcoming.

25 Rachel also told Sabrina words to this exact effect, that

1 she knew exactly who did this to Jackie. And she just wasn't
2 willing to give Jackie -- I mean, give Sabrina the names.

3 But it was very significant in that Jackie was willing to
4 let her use her name. As the reporter here, there's nothing
5 to gain. What is the motive of this young woman to come
6 forward and lie about something like this? There's no person
7 in her life who she's punishing. She's not naming the man,
8 right?

9 You would think most false accusations of rape would
10 involve some type of hatred toward a relationship where you
11 would want to punish somebody because you named them. Not
12 here. She doesn't name the man.

13 People know she's a rape activist on campus. People know
14 that she has spoken out at Take Back the Night. People
15 associate her with stories of this nature.

16 Her name is Jackie. She goes by Jackie. She agreed to
17 allow her name to be used. Very significant to the editors at
18 Rolling Stone; very significant to Sabrina.

19 The bottle incident occurred. Think about that. Think
20 about this in terms of sequence. Hannah Graham goes missing.
21 Bottle incident -- you know, you have all of these things that
22 are confirmatory or that are glossed with that experience.
23 And then you have the bottle incident that gets confirmed.
24 She gets the police report.

25 So they say it's ridiculously callous, the statements

1 that are attributed to the friends. But there are plenty of
2 references in that Plaintiff's Exhibit 10 and Defendants' 64,
3 those reporting notes, where there's confirmation from these
4 other friends, yes, they said things that were hateful. I
5 mean, others said, yes, that sounds about right, they were
6 hateful like that.

7 Ironically, for their case, Emily Renda testified as to
8 some very similar statements in her Congressional testimony,
9 that that was what she was talking about, how there's this
10 victim-blaming problem that occurs and -- culturally here at
11 the University of Virginia and everywhere, actually.

12 So UVa also had a history of noncompliance. They had
13 this OCR investigation going on, which, by the way, ultimately
14 found that they were in fact not taking this seriously enough,
15 that there were failures to do things properly.

16 You all heard some testimony about that. And we know for
17 a fact that the testimony in this case that that OCR report
18 found that Dean Eramo created a hostile environment for sexual
19 assault victims at the University of Virginia. That's what
20 they found.

21 She confirmed it. She disagrees with it. Everyone at
22 University of Virginia disagrees with the OCR report. But
23 there is unequivocal evidence in the record that that was the
24 finding.

25 And why did they find it? Because of the statements she

1 made during the WUVA interview which Sabrina saw, which Liz
2 Garber-Paul saw, which Sean Woods saw. Very significant.

3 Within this context of believability, you then have UVa
4 closing ranks. UVa closes ranks. It won't give her any
5 information. Makes it really tough.

6 She has an interview scheduled with Dean Eramo. They
7 cancel it on the 11th hour. She's headed to Charlottesville,
8 and they cancel the interview, all right? That was on
9 September 11.

10 Then they had this runaround thing: We're trying to get
11 the statistics. And they ultimately give her to Teresa
12 Sullivan, which of course we're not belittling President
13 Sullivan, but as it turned out, she doesn't know a whole lot
14 about these issues. She's certainly not the person who knows
15 the most. Dean Eramo.

16 And if you recall in that e-mail chain, Sabrina said, I
17 must insist on speaking to the person who knows the most.
18 Sabrina was not trying to avoid information. She was trying
19 to get information.

20 This was not, as was insinuated to you with one witness
21 during the trial, drive-by journalism. It's so far from the
22 opposite. This file is extraordinary in the level of detail
23 and effort that Sabrina went to to do it right. Tons and tons
24 of research about UVa, tons and tons of research on how to
25 handle these sexual assault issues, and that is all reflected

1 in her record.

2 Another significant thing: Sabrina was looking at these
3 issues as she had the -- OCR was investigating Phi Psi -- I'm
4 sorry, Johns Hopkins for failing to respond to a gang rape.
5 They're actually being sued for the exact same thing: failing
6 to do an investigation. That all colored the way things were
7 seen.

8 Now, as far as Ms. Garber-Paul, what she found so
9 credible with regard to Jackie, she testified that she
10 corrected the smallest little details.

11 And do you remember on the sheet she did, on those -- on
12 those -- where she galleyed where she was making the
13 corrections? Correcting the tiniest little details. She was
14 fully engaged in the process. She seemed very anxious to
15 participate in the article, and Liz spent more than four hours
16 with her.

17 From Sean's perspective, he testified to -- that it was
18 very significant to him that Phi Psi was under investigation.
19 He viewed that as very confirmatory. Why would the university
20 be investigating Phi Psi if there wasn't some fire under the
21 smoke. So he saw that as a big deal. He also saw Renda as a
22 big deal.

23 He had a lot of trust in his fact checker, and he told
24 you that this was his best writer. These were all good
25 reasons as to why they believed it.

1 Now, they point and point and point to this changing
2 story: oral versus vaginal. Sabrina gave you her view of
3 that.

4 In hindsight, in perfect hindsight, does she wish she had
5 said, hey, let's probe deeper on that? I'm sure she must.
6 But as to this trauma culture that she was in, they all
7 testified that this is normal, this is absolutely normal, that
8 these things evolved.

9 Dean Eramo was not troubled by it. She had first heard
10 oral, and then in April of 2014 learned vaginal. And what did
11 she say? It was even more significant to her because it was
12 another element of force. I remember those exact words that
13 she said. It did not discourage her from believing her.

14 Dean Allen Groves believed her. Everyone, everyone who
15 encountered this young woman, believed her.

16 Yet we are the ones who stand here, and we are the ones
17 who are in a sense being tried for having believed her.

18 I do want to point out to you there's a number of issues
19 I'm skipping over, you'll be glad to know, but it is very
20 significant that you understand and believe Sean Woods when he
21 said to you, if he had any doubt, if he had any doubt about
22 the reliability of that story, reliability of Jackie as a
23 source, that article would not have been published. That's
24 what that man stood up here and testified to.

25 There's no evidence to the contrary. And he is a very

1 believable and honorable man.

2 He said he had two articles in the can. "In the can"
3 means he had other feature stories sitting there ready to go.
4 In fact, they had moved this story into production ahead of
5 one of those.

6 They did not have to publish in any kind of urgency.
7 They also had the opportunity to rewrite. That is a very
8 significant fact in this case.

9 I do also want to point out that the other people who
10 were negatively impacted by this story, the ones who really
11 were, the three friends who got quoted, okay, Kathryn Hendley,
12 Ryan Duffin, they -- they testified in this case, and they
13 said they didn't question Sabrina's good faith. Do you
14 remember that?

15 Ryan -- I think Jackie testified to that as well. She
16 was asked in her deposition. She said -- well, you know, for
17 what it's worth, however credible you find Jackie, but she
18 said about Sabrina: I thought she wanted to help. I mean, I
19 thought she was very eager to write a story, but I think that
20 her intention was good.

21 Did you form an impression that she wanted to address an
22 important issue that was close to you: sexual assault?

23 I believe so. That was her motive. That's what her
24 motive was, yes.

25 Ryan Duffin. Can you tell me about what you remember

1 about your phone conversation with Sabrina?

2 I mean, I remember leaving it with the impression that
3 she was very, very genuinely apologetic --

4 Of course she was. She's genuine.

5 -- for what had happened. It really seemed like she
6 didn't realize when writing the article how much of a factual
7 basis it lacked. She said that she had gotten a lot of her
8 facts directly from Jackie. She said that she, you know,
9 tried to reach out to additional sources, including me, via
10 Jackie.

11 We know that's true because you heard it. Remember the
12 Ryan cookout quote?

13 And took Jackie on her word when those connections fell
14 through. So, you know, really, I feel like Sabrina was acting
15 in good faith when she wrote the article with the information
16 that she had. Didn't seem like -- you know, my initial
17 impression of the article was that she had trumped up a lot of
18 information herself to make it read as a better story. After
19 my conversation with her, I don't believe that. I think that
20 when she -- that what she wrote was based on the information
21 she had been given and didn't involve any additional
22 elaboration or fabrication on her part.

23 Kathryn Hendley, very gracious. This is the one about
24 whom probably the worst things were said, okay? She said: I
25 felt really bad for Sabrina because, I mean, I definitely

1 understood what it was like to be lied to by Jackie. And that
2 cost her her job and her credibility.

3 If those young people had wanted to bring a claim about
4 the three friends, they could, all right?

5 They are not Dean Eramo, and Dean Eramo is not them. All
6 right? But we heard from them and what their attitude was.
7 They thought Sabrina just got caught up in this vortex of
8 insanity, just like everybody else did.

9 Now, I want to switch gears and talk a little bit about
10 the campus safety theme just a bit.

11 All right. One of the key documents that you will look
12 at in this case is Defendants' Exhibit 45.

13 No yawning. It's against the rules. Just kidding.

14 All right. Okay. This is the sexual misconduct policy.
15 This is a very, very significant document in this. This is
16 the rule book. These are the rules that University of
17 Virginia should have been following when Sabrina walked onto
18 the campus.

19 What does it say? When a complainant does not wish to
20 pursue resolution or requests confidentiality.

21 By the way, in this book, if you go to page 8 and look
22 for paragraph C, you will find this:

23 If the complainant does not wish to pursue resolution or
24 request confidentiality -- this is what it says -- Title IX
25 nevertheless requires the university to investigate and take

1 reasonable action in response to the complainant's
2 information.

3 Do you recall Dean Groves was asked this by David Paxton?
4 He said, okay, Dean Groves, do you agree with me that it
5 mandates the university to investigate?

6 Do y'all remember that?

7 And the dean said yes.

8 Now -- and then he said, and take reasonable action in
9 response.

10 Remember Mr. Paxton asked: Do you agree with me that
11 that means reasonable minds can differ? Remember when they
12 had that interchange? This is what they were talking about.
13 This is the policy.

14 Look at what else it says: The dean may conduct a
15 preliminary investigation into the alleged sexual misconduct.

16 In other words, even if the victim doesn't want to, all
17 right? Because, as I said, they are the grownup in the room.
18 They're the ones who have to say, what does campus safety
19 require.

20 This is the lens through which every single thing about
21 the administration was said by the article and in the article.
22 This is what it's about.

23 Now, in effect, the university had procedures that were
24 diametrically opposed to this. They did not do this, and this
25 is what Sabrina was commenting on.

1 I'm going to show you a timeline, just a brief timeline,
2 that talks about some of these issues.

3 You have 2008, UVa was found in violation of the Clery
4 Act.

5 In 2011, the Office of Civil Rights, OCR, sends out a
6 letter that says -- that explains to the universities that
7 they have to consider these public safety issues even when the
8 victim does not want compliance, want to disclose anything,
9 when they want to maintain confidentiality. That's
10 Defendants' Trial Exhibit 29.

11 2011, UVa adopts that sexual misconduct policy that we
12 just looked at.

13 2012, there was a letter that was called The Anatomy of a
14 Rape Case at the University of Virginia. That was an article
15 that was very critical of the administration that was
16 published.

17 September 28, 2012, Jackie's alleged rape occurs.
18 Obviously, there's no warning to the campus or no
19 investigation because she doesn't report it.

20 Now, however, she did report it in 2013 to the
21 administration. As you know, in May of 2013 she reports it,
22 and this is what the administration knows as of that time
23 period.

24 It's a sexual assault by multiple men. They know that it
25 was at a fraternity with Phi in the name, so this is

1 incorrect. This was probably a late-night slide. And then
2 that the perpetrator worked with Jackie at IM-Rec and they
3 know the date.

4 Now, from that point forward, as you saw, there was one
5 e-mail from Dean Eramo to Jackie in June, but from July to
6 October 2013, the university does not even communicate with
7 Jackie.

8 Now, in April -- in 2014, the university learns a great
9 deal more. In connection with Take Back the Night, which
10 occurred right around the time of the bottle incident and in
11 connection with the bottle incident, the UVa administration
12 now knows that there was a sexual assault by multiple men. It
13 was at a -- it was at Phi Kappa Psi. The perpetrator worked
14 with Jackie. They know the date. They know there's two
15 additional allegations of gang rape and that one of them was
16 an official anonymous report; in other words, a separate
17 report filed electronically with the university.

18 What happens here? There is no warning to the campus,
19 and there is no investigation by UVa.

20 What Dean Eramo says is that she was trying to push
21 Jackie into doing something with the police by using this
22 bottle incident as the catalyst to do that.

23 Jackie did not know about those plans, and Jackie did not
24 like those plans. And so when that apparently came up, Jackie
25 pushed back and the police -- she wasn't going anywhere with

1 it.

2 And it's very significant that the police officer
3 testified on the stand that they closed their file. That's
4 what his testimony was, they closed their file.

5 And I think you noticed Mr. Clare corrected himself today
6 when he said "suspended." The man said "closed." And so you
7 have to reopen the file if it was going to be reopened, if you
8 remember.

9 There was absolutely no warning to the campus and no
10 investigation. No cross-checking records at IM-Rec. And
11 interestingly enough, Dean Eramo, she considered doing that.
12 She considered doing that in 2013. It is in the record.

13 September 21 -- I covered a lot of ground really fast.

14 Actually, to properly do this, you would have to say that
15 Sabrina then begins her inquiry. She comes to campus. And in
16 doing so, the -- right about that time period is the first
17 time there's any kind of inquiry made to Phi Psi by the
18 administration. And as we figured out, it turns out to be
19 they just asked them to investigate themselves. But they were
20 actually making inquiries.

21 And then we have the -- I'm sorry, I'm going to go back
22 to that.

23 A very significant time is the fact that in September 21,
24 2015, OCR investigation findings release -- that report is
25 released. That's the one in which Dean Eramo was found to

1 have created a hostile environment.

2 On the damages issue, which she has to prove, you know
3 she has -- that she feels like she was taken out of this Title
4 IX work because of the Rolling Stone article. The reality is
5 that the timeline on that simply doesn't work.

6 She was taken out of that position months and months --
7 it was in fact 16 months after the article, 16 months after
8 the article.

9 But what had happened in the interim was this finding,
10 this finding by OCR, that she had created a hostile
11 environment at the University of Virginia for sexual assault
12 victims. That is why she was taken out of any Title IX work.

13 Okay. Now, back to how Dean Eramo perceived this. We're
14 getting close. Back to how she perceived it.

15 In May 2013, this is what Dean Eramo testified to in this
16 case. She says she told Jackie -- or she said she was
17 concerned about the behavior she was describing. It sounded
18 like it was premeditated and was very worrisome.

19 "I had concern about whether or not we should attach some
20 further inquiry into the matter."

21 You know what that is? What that means is investigation,
22 all right? She had concern about whether they should do it.

23 "And you asked Dean Groves if you should pull the records
24 from IM-Rec; isn't that correct"?

25 Answer: I did.

1 I just talked to you about this. Eramo said that the
2 alleged vaginal gang rape that she learned of in 2014 was
3 another aspect of force that was concerning. She was very
4 distressed by what Jackie was telling her.

5 "And I also now had the information about Phi Psi, and
6 now I also had potential information about another assault, so
7 I was very concerned."

8 Very significant to you in those notes as well, in the
9 Advocate system notes: As of April 21, 2014, Jackie gave the
10 administration permission to inquire with the fraternity. She
11 did. It's in those notes. They had the ability to do it as
12 of April 2014.

13 There it is. "Jackie gave Eramo permission to speak with
14 the fraternities." That's PTX 9 at page 217.

15 This is the meeting in April of 2014 that we discussed.
16 I just want to refer you to the second line of the big
17 paragraph:

18 Student is willing to report this matter to the police
19 but unsure if the administration would move forward with an
20 investigation. Student is also willing to have NPE speak with
21 the fraternities about the concerning behavior.

22 Now, Dean Groves, what did he testify to?

23 As of April 2014, he has these three reports of gang
24 rape. And it doesn't matter to him that it's not on campus,
25 and so he reports this immediately to Pat Lampkin and to

1 President Sullivan. This goes all the way up the chain to the
2 highest person in the administration.

3 Officer Via, like I just said, the case was closed.

4 Another very significant thing that he said during this
5 conversation. Do you remember when Ms. Locke asked him: Did
6 it seem like she was trying to suppress Jackie from proceeding
7 with a claim?

8 And he -- this was his answer: She -- and that means
9 Eramo -- said that, you know the university would look into
10 this, and Jackie was happy with that.

11 So we know he's closing his file, and we know according
12 to the police officer he says that Dean Eramo says the
13 university would look into this. And we know that from his
14 perspective, Jackie was happy with that.

15 But the reality is, the university did not look into
16 this. This is in April of 2014. Nothing happened until
17 Sabrina arrived on campus in September, and that's when the
18 phone started ringing over at Phi Psi. Nothing happened.
19 Five months.

20 Now, one thing I wanted to describe to you. I wanted to
21 just real quickly hit how significant this was to the article.
22 These are -- we have tons of references, seven in fact,
23 express references to campus safety within the article. I'm
24 just going to flip through them real quickly, and you can look
25 on your screen, because I don't want to take the time to

1 actually read them to you.

2 But the -- I pointed them out to you in opening, and it
3 was all about the responsibilities to the rest of the campus,
4 regard for campus safety. No warning has yet been issued to
5 the campus.

6 And this one is the one that clinches it together. This
7 occurs on the very last page of the article, and it's a grisly
8 dossier of which Matthew has been accused, underscores -- this
9 is Jesse Matthew, the killer of Hannah Graham -- has been
10 accused, underscores the premise that campus rape should not
11 be seen through the schema of a dubious party foul but as a
12 violent crime, and that victims should be encouraged to come
13 forward as an act of civic good that could potentially spare
14 future victims.

15 So those were in fact the dominant -- that was the
16 dominant theme in the article.

17 I covered that. This is where I was talking about he
18 had -- reasonable people could differ. And we all know that
19 Dean Eramo was very devoted to this victim choice.

20 Now, the reality as well is that the university knew that
21 it was subject to criticism on this issue. The university
22 knew that it was subject to criticism.

23 I'm going to take you back to this one slide. This is
24 where Dean Groves was testifying. He said that reasonable
25 people could disagree.

1 And the Court said, in fact, you understand there's been
2 a lot of disagreement about that very provision.

3 And the witness said: Yes, sir.

4 All right?

5 But before this article was about to come out, Dean Eramo
6 testified that she sent a text message to, I believe it was,
7 Sara Surface and Emily Renda, and she was talking about how
8 she was about to be thrown under the bus by the Phi Psi
9 fraternity.

10 And this is the quote: "I should have conducted an
11 investigation due to the public safety risk, despite the
12 wishes of the survivor."

13 These were criticisms that were being leveled at her by
14 the Phi Psi fraternity before the article even came out. The
15 university knew that it was subject to this criticism.

16 And the point being here, the point of this article,
17 jurors, is this. We all now know that the story can't be
18 believed, but we all also now know that the administration
19 believed it. They didn't disbelieve it. And we know what was
20 said to them. And the question is, how did they respond?
21 What did they do with that information? Did they follow their
22 rules? Did they not?

23 And just because someone makes a false fire alarm doesn't
24 mean the fire engines don't roll, right? A false claim,
25 you've still got to roll those fire engines. The sirens have

1 to go off. You've got to do your job.

2 That was the criticism in this case. That's the
3 criticism in this article. And that's the criticism they
4 still don't want to hear. Every University of Virginia
5 employee came in here and said, we don't like the OCR report.
6 We don't like its findings. We don't like the article. We
7 don't like its findings.

8 That's not about Jackie. They heard and believed the
9 exact same story. It's about the criticisms. They don't like
10 it.

11 Dean Groves did testify in this court that the OCR report
12 had found that UVa was not doing enough to respond in a timely
13 and efficient manner to reports of sexual assault under the
14 2011 policy when the student elected not to pursue criminal
15 charges or the disciplinary process at the university.

16 Davis testified OCR found the university did not promptly
17 investigate information that it received regarding two cases
18 of sexual assault involving fraternities in 2013 and 2014.

19 She was able to confirm that the 2014 case referenced by
20 OCR was Stacy's case, the one that's in the article that's
21 dealt with at length. And she says she's reasonably confident
22 that the 2013 case referenced by OCR was Jackie. That's very
23 significant.

24 Now, I was talking to you about these damages a little
25 bit earlier and how Dean Eramo complains that -- and I'm sure

1 she misses that work. I don't question that being genuine.
2 It had to be very rewarding work for her, and in many respects
3 she had to be just great at it. But in the campus safety
4 aspect, maybe not the best.

5 But here's what she wrote to Emily Renda after those OCR
6 findings were released:

7 I'm still seething over the OCR findings letter, but I
8 will survive. But I am likely to get pulled from the Title IX
9 work permanently. Please do not tell others yet. Still
10 hoping I may be able to ultimately continue some prevention
11 and SVPC contact.

12 This is Defendants' Trial Exhibit 59. That is why she
13 was attributing to her friend, a young woman named Emily
14 Renda, why it was that she was being pulled.

15 Now, as to the good out of this? Brian Head testified
16 that the university made a lot of changes in general after the
17 article came out, and they were positive changes. Do y'all
18 remember him saying that? All right.

19 Now, there's been a lot of criticism in this case that
20 Rolling Stone and Sabrina unfairly criticized UVa for wanting
21 to protect its image, all right? Now, that is not one of the
22 statements sued on. Ms. Eramo is not suing on that statement.

23 But to the credit of the article, Rolling Stone did ask
24 UVa for this statistical information. UVa did shut down the
25 interviews with Nicole Eramo and Claire Kaplan, the school

1 nurse -- or the school health person who handles this.

2 To her credit, Ms. Eramo was perfectly willing to speak
3 to Sabrina. She was the perfect person to speak to Sabrina.
4 Had they spoken, they would have probably gone on for hours
5 talking about victim choice. And I have a strong feeling that
6 Dean Eramo might have come out on top of that discussion
7 because she knows what -- she knows her views and she's been
8 trained in this. And that is exactly what Sabrina was wanting
9 to hear. She wanted to hear from somebody who knew.

10 But you heard what happened when she talked to Teresa
11 Sullivan. She was like, laid it all out. We laid out all the
12 themes to the article on that Teresa Sullivan interview. And
13 on the main one, about victim choice ultimately causing
14 victims to do nothing, not on purpose but as a byproduct, she
15 said, yeah, I just can't comment on that. All right? I don't
16 want to speculate.

17 I guarantee Dean Eramo could have commented, probably for
18 two or three hours, but she wasn't given the opportunity.
19 That was UVa trying to control the narrative, all right? They
20 did not put the person that was best suited for that.

21 Now, by contrast, Ms. Eramo gave an interview to WUVA
22 that turned out to be very important because it ended up being
23 the basis for the OCR finding. She also gave an interview to
24 UVA Magazine.

25 Do y'all remember this one, the magazine article that was

1 also about rape and it was coming out about the same time and
2 it was about sexual assault? And Dean Groves testified about
3 it, and that was the one where the administration -- he got to
4 review it before it got published. And there was this
5 somewhat embarrassing e-mail exchange with these top
6 executives -- or administrators at the university where they
7 said, let's kill it. Let's don't -- you know, and he said,
8 yeah, it was killed.

9 So that's another thing we know about UVa wanting to
10 control its narrative. The article came out -- oh, by the
11 way, and obviously a Rolling Stone reporter rolls into town
12 and Phi Psi gets a telephone call.

13 The article comes out on September 19, 2014.

14 And do you remember Renda testifying as to this? She
15 said -- she was very compelling and powerful too. I mean, it
16 was clear that Emily Renda felt bad. She felt bad about
17 having put Sabrina in touch with Jackie. She felt bad for the
18 ramifications that that was going to have for her friend, Dean
19 Eramo, her colleague, her coworker, who she clearly valued as
20 a great mentor. And there were these exchanges between the
21 two of them at the time. But I found this very compelling.

22 After describing how she was reacting during that first
23 week, she describes this as coming from Dean Eramo:

24 And she felt very strongly, like, she was only continuing
25 at the university, or rather she was only still employed,

1 simply because she would be free to talk to the media if she
2 wasn't employed.

3 Okay, now, Dean Eramo is an assistant -- I mean,
4 associate dean at the school at this time. And what is she
5 saying to this young colleague at that time?

6 She's saying, look, the only reason I think I've got my
7 job is to keep me quiet. The University of Virginia
8 administration does not want me talking to the press. Because
9 that was in the context of talking to the press.

10 So that's coming from the mouth of Emily Renda in
11 testimony about Dean Eramo specifically.

12 Now, another very significant piece of evidence that came
13 into -- in the case, this came in in two places that you
14 probably didn't even notice. I really want you to pay
15 attention. It's Defendants' Trial Exhibit 79.

16 Jackie was asked about it in her deposition, and then
17 Dean Groves was asked about it on the stand as well, although
18 he provided no substantive testimony about it because he said
19 he didn't write it. All right?

20 But this is a letter that was written -- let's see. It
21 was about a month after the article, on December 17, 2014.

22 At this point the University of Virginia has had almost a
23 month to gather its thoughts on the Jackie gang rape. It
24 knows full well all those things we just described that Dean
25 Eramo and the dean's office knew as of April -- May 2013 and

1 April 2014. But it sends Jackie a statement asking her to
2 sign this.

3 The University of Virginia asked Jackie to sign a
4 statement that said: The incident of September 28, 2012, is
5 not accurately described in the Rolling Stone article, nor did
6 I ever state to anyone at the University of Virginia that I
7 was gang raped on that date in the Phi Kappa Psi house.

8 This is what the University of Virginia asked Jackie to
9 sign a month after the article came out.

10 It is simply false. We have been through the records.
11 You know full well that the university was told of a gang rape
12 in April 2014. Wasn't told Phi Kappa Psi. Said a fraternity
13 house on Mud Bowl with a Phi in the name.

14 But as of April 2014, we have seen Dean Eramo's official
15 Advocate records. They show the University of Virginia knew
16 full well that it was Phi Kappa Psi, that it was September 28,
17 2012, and that it was a gang rape, because she testified she
18 knew it was -- she knew it was -- gang rape oral and gang rape
19 vaginal is still gang rape. But she knew it was vaginal as of
20 April 2014. Yet the university was asking her to do this.

21 It is simply false. It's impossible to believe that the
22 university did not know this to be false when it sent it to
23 Jackie December 17, 2014.

24 Had Jackie signed this, in clear contradiction to the
25 evidence that sat in the dean of students office, the evidence

1 that sat in that Advocate system, she would have violated that
2 honor code that they talked so much about. The school could
3 have expelled her just like that because there's no question
4 it was false. It would have been a lie.

5 Okay. I get it. You can't say everything, right?

6 A few words I do want to tell you. It's not -- it's
7 really hard to deal with Jackie because I think everyone on
8 our side believes something really bad did happen to her
9 somewhere along the line. Something's not right. Don't know
10 what, don't know how, don't know if, really. But we do know
11 that she deceived us, and we do know that some of it was
12 purposeful.

13 That statement that you all heard where she said that --
14 where she talks about how Ryan had told her at cookout that he
15 didn't want to be part of her little shitshow? Do you
16 remember that? That's not a rape memory. That's not a trauma
17 memory. That's a current, in-the-moment deception. That's a
18 lie. Can't color it any other way. And that was a lie
19 designed for one purpose, and that was to get Sabrina to
20 believe something that was false, all right?

21 Jann Wenner was right when he said, we don't live our
22 lives expecting this. Who expects that? Who expects somebody
23 to lie to you like that? Who expects someone to pull out
24 their cell phone like Sabrina said and just send these text
25 messages to God knows who? Maybe she wasn't even doing it,

1 okay?

2 But it happened. And she -- it happened to Sabrina.

3 We're just not equipped for it.

4 At the same time she was triangulating with others. She
5 would be on a phone call with Sabrina, telling her how excited
6 she was or something, and then she'd send a text message or
7 call some friend and tell them the complete opposite.

8 We know for a fact she was telling Sabrina that she was
9 perfectly fine to name the fraternity and use her name on
10 September 11.

11 On September 17 she goes -- you know, just a few days
12 later, she goes into Nicole Eramo's office and says, you know,
13 I'm just so anxious about this, and I don't want to use the
14 fraternity's name.

15 And her notes from that day -- this is PTX 9 at 299. She
16 says: The reporter will run with the story identifying the
17 fraternity. Jackie is very anxious and upset. NPE will work
18 with her to get counseling.

19 Dean Eramo got her counseling because she was telling her
20 she was so upset they were going to use her name. We heard
21 her talk for two and a half hours to Sabrina about how okay
22 she was with using her name. These are five days apart, all
23 right?

24 Then she's telling Sabrina that she's excited about the
25 article coming out. She's going and telling Dean Eramo and

1 Lori Casteen at that point, oh, how nervous she is about it.
2 She was playing all the sides at each other, and that's where
3 it really started to come into play.

4 And so it is no surprise then that when the article came
5 out, Dean Eramo saw it through the eyes -- through the fat
6 lens. She saw it through the lens of this young woman who had
7 been coming to her and telling her, hey, I'm being taken
8 advantage of.

9 That's not the same young woman that had been talking to
10 Sabrina. She was playing everyone off each other.

11 After the article she tells Ryan, her friend, hey, she
12 totally misquoted you on all that stuff. I'm sorry, Sabrina's
13 just an out-of-control writer. Those are things that are in
14 this record.

15 But she's telling Sabrina at the same time she's sending
16 her a text message, saying, article was great, loved it.

17 So that's the type of situation that you're in. There
18 are a lot of takeaways you could spend the rest of your life
19 probably thinking about, what it would be like to be a victim
20 of such a hoax, such a fraud. But it happened to us.

21 Nobody plans their life looking for a Bernie Madoff. We
22 just don't. We don't. It's like a perfect storm. Nobody
23 expects this to happen. And our world would shut down if we
24 walked out of this courtroom expecting everyone to lie to us
25 like that. It just couldn't function. We don't go about our

1 life doing that. Trust is inherent, at least some degree of
2 trust.

3 But we know this: Everybody believed her - Dean Eramo,
4 Lori Casteen, Dean Groves, Alex Pinkleton, Amy Forrest, Rachel
5 Soltis, Sara Surface, Emily Renda, Sabrina, Liz Garber-Paul,
6 and Sean.

7 Now, when you go back into the jury room, which is going
8 to have to be tomorrow, we didn't get to it today -- and I'm
9 going to go through the verdict form with you just real
10 quickly, just really quickly, before I sit down.

11 But I suggest that you do this. As to these issues that
12 are nonissues, as to the ones that Mr. Clare spent 99 percent
13 of his time talking about, whether Sabrina made the most
14 colossal mistake of her life in not pursuing the three
15 friends, whether she should have hounded for Drew's name,
16 whether she should have, could have, would have, all these red
17 flags, should she have known that this or that, should she
18 have known that those statements were inherently, you know,
19 too stupid to be true, should she have, should she have,
20 should she have. All right? All that stuff has nothing to do
21 with whether these statements are true or false that she
22 said -- and that are attributed to the three ones at issue in
23 the case.

24 I suggest to you that you simply spend a few minutes, get
25 that out of your system, talk about it, and then put it in a

1 box. And take that box, open the jury room door, and put the
2 box outside, because it is not the issues in this case. Those
3 are not the issues.

4 The issues are the ones that I went over with you:
5 actual malice, subjective knowledge, what did Sabrina believe,
6 what did Sean believe, what did Liz Garber-Paul believe. Did
7 they hold serious doubts. Those are the issues.

8 Now, I am going to tell you -- it's like one of those
9 sample ballot forms, you know?

10 May I switch over here? Okay.

11 MS. McNAMARA: That's the wrong one.

12 MR. SEXTON: Is this the wrong one? These are the
13 ones y'all gave me.

14 I think these have been through a number of versions, so
15 it's a little bit understandable when we grab the wrong one.

16 As Mr. Clare said, there will be a statement that is the
17 one at issue. For example, this is the one that is -- lots of
18 people have discouraged her from sharing her story.

19 Your first question: Do you find by a preponderance of
20 the evidence that this statement is actionable, by satisfying
21 each of the elements set forth on page 23...

22 Page 23 is the page I showed you that means it's
23 defamatory and whatnot. It's not context for malice, all
24 right?

25 If you answer no, which is what we suggest that you do,

1 you move on. You don't go anywhere else. You just go down to
2 the next number, 2, but you don't do B.

3 If you answer yes, then you have to answer the following
4 question: Do you find that the plaintiff has established by
5 clear and convincing evidence -- that's the higher standard
6 that I was discussing with you -- that Sabrina Rubin Erdely
7 acted with actual malice in making this statement?

8 The answer is no.

9 And then it just goes through one after another, just
10 like that.

11 There is -- using the definitions that the Court
12 provided, the republication definitions, on number 10 you will
13 be asked: Do you find by a preponderance of the evidence that
14 Sabrina Erdely republished the article on December 5th?

15 The answer is no. If it is no, you stop.

16 And that -- in this verdict form situation, you will
17 not -- I can't remember if any of y'all have been on jury duty
18 before, but you will not be asked -- we certainly -- let me
19 retry to take that plane off just one more time.

20 We believe that there is no way that you should find in
21 favor of the plaintiff on these issues. We believe the
22 evidence cannot in any stretch support a finding of actual
23 malice on these statements.

24 If, however, you were to find otherwise, that would mean
25 you would find for the plaintiff, right? But in this case,

1 you are not going to be asked to fix damages at this point.

2 That would be for another day, all right?

3 So this -- there's no place on that form where you're
4 going to be asked: And I award damages in the amount of X
5 dollars. All right?

6 So when you answer these questions, that's it, all right?
7 So it is somewhat different. And because -- you know, I
8 didn't want you to be confused when you go back and do that.

9 Ladies and gentlemen, I want to thank you so much again
10 on behalf of our clients. They're great clients, and they are
11 very appreciative of you for being great jurors. They've
12 watched attentively as you all have given them every ounce of
13 attention you can possibly give between the hours of 8 a.m.
14 and 6 p.m. every day.

15 We thank you for your service. We just thank you for
16 being such good, active participants in this. And we have
17 every confidence that you will apply the law just as you're
18 instructed to by Judge Conrad.

19 Thank you very much.

20 THE COURT: Does anyone need a break before we have
21 plaintiff's last closing statement?

22 Anyone need a break?

23 Mr. Clare, then I think they're ready for your final
24 argument.

25 MR. CLARE: Can we switch back over? Actually, put

1 it on the ELMO if you could.

2 THE CLERK: Okay.

3 CLOSING ARGUMENT BY THE PLAINTIFF (REBUTTAL)

4 MR. CLARE: Mr. Clare's final argument, I think you
5 just heard the judge say. I'm sure you're happy about that.

6 Not only was I the lawyer that was standing between you
7 and lunch, now I'm the lawyer that's standing between you and
8 dinner. I will try to respect that and be relatively brief.

9 But I do need to go back and address some of the things
10 that Mr. Sexton said to you. This is sort of like Paul
11 Harvey: This is going to be the rest of the story.

12 Mr. Sexton started out by saying that Rolling Stone and
13 Ms. Erdely wanted to do an article about how UVA responds, and
14 they wanted to have a criticism of a public figure. But you
15 have to do those things if you're going to do them honestly.

16 We can have a debate in this country about these issues,
17 but you have to have an honest debate. You can't misrepresent
18 the facts in order to gain an unfair advantage in the public
19 debate over these or any other issues. That's not journalism.
20 You have to get the facts right, and then we can have a
21 debate.

22 Mr. Sexton said that 97.3 percent of what we wanted to
23 talk about is irrelevant. He asked you to ignore all those
24 red flags and ignore all of those mistakes that were admitted
25 and all of those explanations that kept coming and coming and

1 coming about all of the errors that they made and all the
2 things that they disregarded and said, just take a few moments
3 and get those out of your system, put them in a box and put
4 them outside the jury room.

5 Well, ladies and gentlemen, the instructions that you
6 will be given, only some of which Mr. Sexton showed you, when
7 you read them in their entirety -- and the judge will read
8 them to you tomorrow and you'll have them in there, without
9 the ellipsis in there, in their entirety -- you'll see why
10 these issues are directly relevant to this question of actual
11 malice.

12 Mr. Sexton told you that Drew and the three friends and
13 all those sorts of things are irrelevant.

14 Let's look at page 35 of the jury instructions, which you
15 will have. I showed you a portion of this earlier:

16 However, if there is evidence that the defendants failed
17 to investigate when doubts were created because the story was
18 weakened by inherent improbability, internal inconsistency, or
19 apparently reliable contradictory information, you are
20 permitted to infer from that evidence that a defendant acted
21 with actual malice.

22 The Court will instruct you, you are permitted to draw
23 that inference and find, yes, that the defendants acted with
24 actual malice when those things occurred.

25 Repetition of another's words does not release one of

1 responsibility.

2 So Rolling Stone and Ms. Erdely are not released from
3 responsibility if the repeater knows that the words are false
4 or inherently improbable or there are obvious reasons to doubt
5 the veracity of the person quoted.

6 Again, all those conflicts in her story, all those
7 refusals to put her in touch with the people that actually had
8 firsthand information, those are obvious reasons to doubt the
9 veracity of the person quoted.

10 Ms. Garber-Paul, I'm glad she's here in the courtroom
11 because if they had listened to her, some of this could have
12 been avoided.

13 Quote: When a defendant relies on a source for a
14 statement alleged to be defamatory and has subjective doubt as
15 to the truth of the source, you may infer that a defendant
16 acted with actual malice by making a deliberate decision not
17 to follow up out of a desire to avoid conflicting information.

18 That's Kathryn Hendley, that's Ryan Duffin, and that's
19 Drew, and it's the other guys from Phi Psi. It's absolutely
20 relevant to your consideration.

21 You need consider the information that Jackie told
22 Rolling Stone as a whole and the information she refused to
23 tell them as a whole in order to discharge your duty under
24 this instruction and evaluate whether these things were true
25 or not. You may infer actual malice from those facts.

1 You may not, consistent with the instructions, do what
2 Mr. Sexton asked and put them in a box outside of the jury
3 room.

4 He also said that failure to investigate is irrelevant.
5 That's not actual malice.

6 Page 39 of the instructions will tell you that failure to
7 investigate can be relevant to actual malice. A plaintiff,
8 Ms. Eramo, is entitled to prove the Defendants' state of mind
9 through circumstantial evidence. You are entitled to consider
10 failures to investigate, departures from journalistic
11 standards, evidence of ill will or intent to injury, and
12 evidence of a preconceived story line in determining whether a
13 defendant had a high degree of awareness of the probable
14 falsity of the statements.

15 You may infer from -- actual malice from these facts.
16 You may evaluate a preconceived story line or a failure to
17 investigate as evidence of actual malice and whether -- given
18 the facts in her possession, the inconsistencies in Jackie's
19 behavior, whether or not more should have been done.

20 Mr. Sexton talked about the radio interview statements by
21 Ms. Erdely after the fact. He said this wasn't about the
22 article, and it's not clear it was talking about Dean Eramo.

23 Well, you've had this jury book in your laps for the last
24 two weeks, and you've seen it and had a chance to read it.
25 That's just not true, and I'm going to show you two of the

1 examples of it.

2 Tab 4 of your jury book. This is the Slate podcast, if
3 I've got that right. Page 10, line 16, a question was posed
4 to Ms. Erdely: Sabrina, one of the things you talk about is
5 how there are kind of three options, that Dean Eramo presented
6 Jackie with the three options as all people in this position
7 do.

8 And she sort of went on to talk about it.

9 And it's in response to these questions from this caller
10 that these post-publication statements were made.

11 The same true on page 10 -- sorry, page 12. Another
12 question: Sabrina, can you talk a little bit more about the
13 relationship between the community of survivors of the alleged
14 victims of the university and particularly Dean Eramo?

15 That's our statement number 9. And that's where she
16 talks about the attitude that radiates from the
17 administration: that if you unburden yourself to the dean and
18 take care of your own mental health, that's good enough.

19 So these post-publication statements were plainly about
20 the article, and they were plainly about Dean Eramo. They
21 were in response to questions about Dean Eramo. And they were
22 there talking about the article and promoting the article,
23 driving website traffic to it.

24 Mr. Sexton talked to you about the Columbia Journalism
25 Report, what it said and what it didn't say about what Rolling

1 Stone believed and what witnesses believe. And the Columbia
2 Journalism School report is a great document. Both sides have
3 said a lot about it. But it's no substitute for your
4 evaluation of the credibility of these witnesses.

5 Columbia Journalism School, for all of the benefits that
6 it had, did not have the benefit that you have. They didn't
7 have subpoena power like we did in order to gather all these
8 documents for you and be able to get the testimony and
9 witnesses under oath from people. They couldn't put people
10 under oath.

11 They didn't have testimony from Jackie. Jackie refused
12 to cooperate with them. We have Jackie's sworn testimony.

13 They didn't have any of the documents that we were able
14 to get from Rolling Stone about their behavior after the
15 publication, and they didn't have the benefit of Jann Wenner's
16 statements about the retraction after it was all over, because
17 they retracted only after the Columbia Journalism School came
18 out with it.

19 So they didn't have the benefit of hearing Mr. Wenner
20 say, I don't stand by that retraction, meaning the April
21 retraction.

22 I agree with Mr. Sexton. I think he should consider the
23 circumstances and timing retraction in deciding whether or not
24 there was actual malice. And I think you should apply your
25 common sense to whether December 5 was a retraction or not.

1 Doesn't say the word "retraction." They didn't take it down
2 from the website.

3 Managing editor, Will Dana, one of the best in the
4 business, according to them, said, that's what a retraction
5 means to him, is when you take it down.

6 They didn't do either one of those things on December
7 5th. Not one of them.

8 They knew how to retract an article when they wanted to.
9 We know that, because in April when they did want to retract
10 it, the managing editor published a note to all of their
11 readers saying, we are hereby officially retracting "A Rape On
12 Campus," and they took it down from their website. That's a
13 retraction.

14 It's just not credible that December 5th was anything
15 other than an editor's note that doubled down on the
16 allegations about the university, and left it muddy and
17 unclear about what it was they were actually walking back from
18 and which ones they weren't. They were asking readers to
19 figure out for themselves and reread the defamatory statements
20 about Dean Eramo.

21 Columbia Journalism School did not have the benefit of
22 Mr. Wenner's statements after the fact saying, I don't stand
23 by even the full retraction in April.

24 So I think you should consider the fact they waited five
25 months to retract the article and to take it down from their

1 website and have almost half a million more people come to
2 their website to see it. I think you should consider that in
3 terms of whether or not they acted with actual malice. I
4 agree with Mr. Sexton about that.

5 The rape school quote, only sourced from Jackie. And
6 there was a deliberate decision made not to follow up and find
7 out from Nicole Eramo whether or not she had ever said it or
8 not. Not a word from Mr. Sexton in his closing about the
9 false setup for that rape quote, also from Jackie.

10 Jackie told Liz Garber-Paul, that didn't happen. I
11 wasn't looking at those crime statistics -- that they left in
12 anyway, even though Jackie had said it didn't happen like
13 that. That was enough to cast doubt on the entire quotation.

14 They should have followed journalism 101 and asked Nicole
15 or UVa to verify.

16 Now, we heard from Mr. Sexton that this quote was
17 credible in part to Rolling Stone because they had had a hard
18 time getting the statistics out from UVa before their
19 interview of President Sullivan. That's one of the things why
20 they said it's so believable.

21 Well, the University of Virginia had a lot of things
22 going on when Sabrina Erdely was demanding these statistics.
23 They had a student who was missing. And, you know, the
24 deans -- the dean of students and the president of the
25 university was rightfully focused on that as opposed to

1 getting Sabrina the statistics she wanted in the time that she
2 wanted. They made time to interview with her because it was
3 important, but it wasn't more important than finding Hannah
4 Graham. And it certainly doesn't make it more credible that
5 Nicole Eramo would have issued this quote.

6 Post-publication statements, these radio interviews and
7 other Washington Post statements and that sort of thing, they
8 know they can't defend what those statements mean, that they
9 are false and defamatory, the brushing off and suppressing and
10 didn't take to police. They know that they can't defend it on
11 those grounds.

12 So what do they say? There's no damage from that.

13 Well, the reason why we have jurors, real people,
14 citizens, not lawyers who've had this, because we want people
15 with common sense to come in and apply some common sense to
16 these factual questions. They beat it out of us in law
17 school, but we need you to apply some common sense. And you
18 should bring your common sense to this question.

19 You can certainly determine whether a radio broadcast
20 that was heard all over the New York City metropolitan area,
21 including, by the way, Jersey, where Nicole is from, grew
22 up -- heard her talk about that -- whether people heard it or
23 not. These radio shows, the transcripts are there, the hosts
24 heard these statements, the callers, the people who called in
25 on these radio -- they heard these statements. That's in

1 evidence.

2 And you can make your own determination whether or not it
3 meets the standards set forth in the jury instructions for
4 whether or not it would damage her in her position of
5 employment.

6 Page 31 of the jury instructions that the judge will give
7 you. "It must harm plaintiff's reputation, rendering her
8 contemptible or ridiculous in the public's estimation."

9 That's the standard. You can make that determination
10 about whether the statement she brushed off and suppressed
11 sexual assault and didn't take to the police, didn't treat
12 rape as a serious crime, you can make that determination.

13 And Mr. Sexton said that she -- we didn't have a witness
14 that came in from New York to testify that they heard this.
15 Well, Mr. Woods said that he heard it. But even putting
16 Mr. Woods aside, you have evidence about the callers and the
17 host.

18 But it also flatly contradicts what the jury instructions
19 say. Page 27. The judge will instruct you that "a defamatory
20 statement is deemed published or made by the defendant when it
21 is communicated to and understood by a person other than the
22 plaintiff."

23 That's what we were criticized for not having put in
24 evidence.

25 "Publication may be proven by direct evidence" -- that's

1 if we had brought in somebody from New York -- "or
2 circumstantial evidence. The plaintiff need not identify the
3 person to whom the defamatory words were published and need
4 not place in evidence testimony from a third party regarding
5 what the person heard and understood."

6 That's what Mr. Sexton was criticizing us for. The law
7 is to the contrary. We do not have to put in that evidence.
8 The judge will instruct you on that.

9 Mr. Sexton had a couple of shout-outs for the note-takers
10 in the crowd, and I'm going to do my own.

11 On the nonreaction statement, you can tell -- you can
12 look at the article yourself and see whether or not this was a
13 description of the facial expressions or not. But I'd like
14 you to write down in the margin next to the nonreaction
15 statement, Plaintiff's Trial Exhibit 10 at the pages ending
16 4312. That's where Jackie reported to Sabrina that: Nicole
17 then got pissed at the frat and said, there have been two
18 fraternities whose charters have been canceled. I wouldn't
19 mind a third.

20 Plaintiff's Trial Exhibit 10, 4312.

21 It's not a nonreaction.

22 You didn't hear a lot about the police in Mr. Sexton's
23 remarks. He said, well, it's about a totally separate
24 assault. Had nothing to do with that situation, nothing to do
25 with what this article was about.

1 Nonsense. Rolling Stone included two paragraphs in the
2 article about it. They chose to include that fact in the
3 article. They're the ones that made the decision it had
4 something to do with Jackie's story. They thought it enhanced
5 her credibility. They thought the bottle incident was
6 relevant.

7 What they didn't think was relevant was the fact that
8 Nicole had taken her to the police. And what they didn't
9 think was important enough to do, in light of all of this
10 information and the fact that Jackie and Nicole are sitting in
11 a room with two police officers when we're talking about gang
12 rapes and campus safety and warnings and all these things that
13 they claim to be so concerned about, no one asked Jackie the
14 question: Were you asked about your sexual assault in this
15 setting? No one.

16 No one asked Jackie: Isn't it true that Nicole Eramo
17 brought up the rape, the sexual assault, in that meeting and
18 pushed you to do that? As she testified happened in that
19 meeting.

20 And Detective Via and Officer Rexrode told you the exact
21 same thing. It wasn't just about the bottle incident. It was
22 about the sexual assault as well. But no one asked the
23 question. And they had every reason to ask the question when
24 you're talking about these issues they claim to be interested
25 in: victim choice, campus safety, or how Nicole interacted

1 with Jackie.

2 Mr. Sexton said Sabrina did her job by issuing a FOIA
3 request. But she didn't ask her main source, who she had
4 spent months and months with, the simple question. So the
5 answer to Mr. Sexton's question, did she do her job, is no,
6 she did not.

7 Mr. Sexton talked about this notion of an ordeal, and we
8 saw that in some of the press statements that -- made after
9 the fact, that they put Jackie through an ordeal, the
10 university administrators put her through an ordeal.

11 That's a tricky one for them. That's a hard one for them
12 to explain what that means, because it's at the hands of
13 university administrators and an ordeal. So they've come up
14 with this theory that it was putting her through an ordeal to
15 ask Jackie to go back to these two women, whose identity is
16 known only to Jackie, and try to get them to come forward.
17 That was the ordeal that they supposedly put her through, this
18 burden of going back and asking these two women, who are known
19 only to Jackie, and Jackie's the only person on the planet who
20 has seen -- claims to have seen or talked to or knows anything
21 about them, even though she can't answer questions about their
22 name or their hair color or where they lived or any of the
23 questions that I asked her in the deposition.

24 Nicole Eramo asked this young woman, she said, my God,
25 get these women to come in and see me so I can help them.

1 And yeah, she said, I know this is stressful for you
2 because you're having to deal with your own assault. But she
3 had no other choice. There's no other way she could have
4 found out anything about these women or done anything with
5 these -- for these women or with their information or any of
6 the things that Mr. Sexton is criticizing Nicole and the
7 university for doing without that information.

8 And it's a damned if you do, damned if you don't from
9 that situation.

10 When -- if she wouldn't have asked that question of
11 Jackie, if she wouldn't have said, my God, bring them in or
12 bring me their names or tell me who they are, Rolling Stone
13 and Sabrina would be criticizing them for doing nothing. They
14 didn't do an investigation. They don't care about campus
15 safety. We've heard that whole thing.

16 And then when Nicole asks the question and says, my God,
17 bring these women in, then it's putting her through an ordeal.

18 So it's one or the other. It's either you're not
19 investigating, you don't care about campus safety, or when you
20 ask a question to help these two unnamed women, it's putting
21 her through an ordeal. It's damned if you do and damned if
22 you don't. And that's the problem Nicole is in with the way
23 that they reported the story from the very beginning.

24 Mr. Sexton spent some time talking about republication,
25 but not a word about the testimony from Jann Wenner, the man

1 at the top, who said a reader would have to go read the
2 article to find out what we were walking away from and what we
3 weren't, inviting readers to go look at that article and read
4 it again.

5 And not a word about the testimony from Sean Woods who
6 said, it was a big news story when we issued this.

7 And not a word about the nearly half a million people
8 after the fact who went and did exactly what Jann Wenner said
9 would need to be done and validated what Sean Woods had said,
10 that this was a big news story. Not a word about that. It
11 was absolutely a republication on December 5th.

12 Mr. Sexton said, what was the motive for Jackie to make
13 this up? It was so improbable that she would make up all
14 these stories and that sort of thing.

15 Well, I don't know what her motive was, and in some ways
16 we will never know.

17 But what Rolling Stone perceived about Jackie is right
18 there in the article. They described her as
19 attention-starved. And I think you can listen to the
20 audiotape, and you can see from the files that that's probably
21 spot on, that Jackie was attention-starved.

22 And when Ms. Erdely, Rolling Stone reporter, breezes into
23 town and wants to sit down with someone like that who's
24 attention-starved, it's like feeding crack to someone who is
25 desiring attention. This is what Jackie was craving.

1 That's why she wanted her name to be used. That's why
2 she was okay with having Jackie, an abbreviation of her full
3 name, being used.

4 Now, if you look carefully at the reporting notes, which
5 they claim to have done, you see other things that support
6 this notion. It wasn't just Jackie that had a bottle
7 incident. It's right there in the article. Emily Renda had
8 something thrown at her in a similar incident a while earlier.
9 In fact, you heard Jackie talk about how the bottle-throwing
10 incident occurred right on the way -- as she was on her way to
11 Emily's birthday party.

12 Did she copy her story from Emily in order to get some of
13 the attention that Emily got on campus as being an advocate?
14 I don't know. But if I'm an investigative reporter for a
15 major magazine and I'm trying to evaluate the credibility and
16 motives of my source, that's a question I'm going to ask.

17 It's right there in the article they published that Emily
18 Renda had a bottle incident similar to it. Never asked the
19 question.

20 Same thing about the tattoo. We hear about the tattoo
21 defense, that she got the tattoo and that somehow means that
22 the story was all true.

23 Well, in the reporting file, you also hear that Alex
24 Pinkleton had a tattoo. Jackie looked up to these girls.
25 She'd found a community of friends in this support group of

1 One Less, this group that doesn't judge, this group that
2 accepts and believes and supports and empowers. She found
3 friends with these groups. And if it meant copying a bottle
4 incident or getting a tattoo in order to fit in, in order to
5 be part of that group, these are questions that an
6 investigative journalist should be asking.

7 These are not questions, though, in terms of being
8 skeptical of Jackie, that Nicole Eramo was supposed to be
9 asking or the other litany of people that Mr. Sexton rattled
10 off - Rachel Soltis and her friends and Sara Surface and Alex
11 Pinkleton and all these other folks that he rattled off. He's
12 got a better litany than I do of all the people that believed
13 Jackie. These are all advocates. These are all supporters.
14 These are all friends.

15 These are all people who did what friends are supposed to
16 do, which is believe and support and love and empower; not
17 question, not poke for criticisms, and not try to get to the
18 actual facts right.

19 These are people who are trying to help Jackie deal with
20 whatever it was that she was dealing with. And Nicole was
21 right there at the front of the line trying to help Jackie.

22 And so the fact that Nicole believed Jackie, and the fact
23 that Emily Renda believed Jackie, and the fact that Rachel
24 Soltis believed Jackie, and all these other women, is
25 irrelevant. They have a different job and a different role in

1 this drama than Sabrina and Rolling Stone. These are
2 advocates and friends.

3 These are journalists sitting behind me. It's a major
4 news organization that brags about the awards that it wins,
5 its hard-hitting reporting, and its fact-checking. They have
6 a different role. They're supposed to be skeptical. They're
7 supposed to ask hard questions. They're supposed to ferret
8 out inconsistencies. That's what they're supposed to do.

9 So the fact that these other people believed and repeated
10 does not discharge them of their obligation to do their job.
11 Nicole did hers; these other advocates did theirs. These
12 folks didn't do theirs.

13 We heard about a couple of things that aren't in the
14 article that I suppose are designed even today to try to make
15 Nicole look bad.

16 We heard about this WUVA interview creates a hostile
17 environment on campus. It has nothing to do with Jackie,
18 which is what the article is about. It's not referenced in
19 the article. The whole story about how that was a student
20 project that got misrepresented to Nicole. But putting all of
21 that aside, it has nothing to do with it. The only reason for
22 bringing it up is that they're still attacking Nicole, and
23 they want you to think less of her as a result of that WUVA
24 article.

25 But don't be distracted from it. It has nothing to do

1 with what they published about her on November 19th and
2 republished on December 5th. Not referenced in the article at
3 all. Has nothing to do with Jackie.

4 The same thing with these -- I can't remember what the
5 phrase is -- inappropriately candid communications with
6 students, "flat-out fucked" and "awesome bitches" comments.

7 Well, you know, Nicole is trying to build a relationship
8 with these young women. She's in the dean of students office.
9 And when you're trying to relate to students, you have to
10 relate to students.

11 And these women became her friends. They became her
12 babysitters in some cases. They have nothing to do with the
13 issues that you're being asked to describe [sic]. There's no
14 jury instruction that will tell you that those issues are
15 relevant to any of the questions here, other than the fact
16 that they're still trying to run Nicole down to this day.

17 They say they've apologized. They said they retracted.
18 But even as we sit here, this -- that's what's going on.

19 They make a big deal of the fact -- they try to make a
20 big deal of the fact that Nicole had several job changes after
21 the article came out, and they point to the last one in the
22 chain. They say, oh, this came in 16 months after the article
23 came out.

24 Well, the testimony, which you will remember from Dean
25 Groves and from Nicole, it's a lot more complicated than that.

1 The one thing that you will remember from what Nicole
2 testified to and what Dean Groves testified to was that the
3 day after the article came out, after Nicole pulled herself
4 out of her house, stopped crying long enough to go to the
5 office, she was told, gather your files and turn them over to
6 someone else.

7 These survivors that she had spent years and semesters
8 trying to build relationships with and getting them to the
9 point where they trusted her were all handed over to somebody
10 else. And so it did a great disservice, I submit, not just to
11 Nicole but to all these other men and women that had been
12 working with her for all this time, that now start over with
13 somebody else.

14 But that was the day, the day after the article came out,
15 when she was -- said, bring your files to this meeting. And
16 she testified, I thought I was going to be fired that day.

17 Thank God she wasn't. Thank God that people like Dean
18 Groves and Pat Lampkin, who know Nicole, who know the real
19 Nicole, didn't fire her.

20 And of course they didn't change their opinion of her
21 based on the article. Of course not. They know her. The
22 people that know Nicole and watched her work with survivors,
23 they know that's not her that was portrayed in the article,
24 and not portrayed with the thumbs up to survivors as shown in
25 the picture. Of course it didn't change the way they thought

1 about it.

2 But they knew that that's not the way the world would
3 perceive Nicole and that that student trust that had been
4 built up over those many years was gone. And so the day after
5 the article came out they said, give us your files. And she
6 doesn't have them back today.

7 So no interim job changes have anything to do with the
8 fact that she lost her ability to do what she loved, which was
9 working with students.

10 Mr. Sexton brought up a point about a statement they
11 asked Jackie to sign. UVa did. Nicole had nothing to do with
12 that. There's no evidence that she did. There's nothing on
13 the e-mail that Nicole had anything to do with it.

14 As when -- after the story came out, Nicole was in full
15 lockdown mode. She wasn't involved in dealing with Jackie
16 other than, as you've heard her testify to, she tried to
17 express through an intermediary concern about her well-being.
18 She wasn't trying to get Jackie to issue a statement. Totally
19 irrelevant to the issues here.

20 I'm going to end on this note. Mr. Sexton made a point
21 saying -- I think it was about Sabrina, but it may have been
22 about the larger group of folks behind me. He said, they
23 didn't want to republish it, he says. They want everyone to
24 forget it. He wishes it never happened, the article.

25 I bet they do. I bet they wish it never happened.

1 But they're the ones that did this. They're the ones
2 that set this in motion. They're the ones that hit "print"
3 and "send" and published this to a global audience.

4 Nicole did not have that choice. The folks behind me had
5 the choice to publish or not publish, and they chose to do it.
6 Nicole did not have the luxury of making that decision, of
7 forgetting it. She doesn't have the luxury of forgetting the
8 e-mails that she received calling her the dean of rape and a
9 despicable human being and hoping that she rots in hell. She
10 does not have that luxury.

11 And that is why we need you ladies and gentlemen to enter
12 a verdict setting the record straight.

13 Thank you and good night.

14 (Closing arguments concluded at 6:05 p.m.)

15 THE COURT: Ladies and gentlemen of the jury, this
16 concludes today's session of the trial. In just a moment I'm
17 going to send you home for the evening. But I want to say in
18 stronger words something I've said all along as you go home
19 each day of the case, and that is this:

20 Don't try to begin to deliberate overnight. Don't think
21 about the case or how you view the evidence or how you weigh
22 the instructions that you've heard imparted from the attorneys
23 during the course of closing arguments. It would be a
24 violation of your sworn duty as jurors to begin to deliberate
25 before the Court charged you to do so.

1 I also tell you that I would be very disappointed if you
2 spoke to anyone at home about the case or read any account
3 about the case or listened to any broadcast about the case
4 until I tell you it's time to begin your deliberations and
5 collectively talk about the evidence and reach your verdict.

6 And there's a very practical reason for this. I'm going
7 to charge you about the law first thing in the morning. The
8 attorneys, with my permission, have shared portions of the
9 instructions with you during the course of their arguments.

10 But it would be wrong to single out any one instruction
11 as stating the law of the case. It would be wrong to consider
12 the instructions individually. They need to be considered in
13 tandem, at the same time, when all of you have a set of the
14 instructions, when I read them to you and you have a set to
15 take back with you to the jury room.

16 So it is for this very practical reason as well that I
17 tell you: Don't think about the case tonight. Don't begin to
18 deliberate. Don't speak with anyone about the case. Put it
19 out of your minds till you come back in the morning ready to
20 receive the Court's charge and shortly thereafter begin your
21 deliberations.

22 You folks are excused at this time. Have a safe trip
23 home.

24 A JUROR: What time do we come back in the morning?

25 THE COURT: Oh. That's the most important thing.

1 Let's begin at 9 in the morning if that suits everyone.

2 A JUROR: 9?

3 THE COURT: 9:00. 9 a.m.

4 Ask the marshal declare the Court adjourned for the day.

5 (Court adjourned for the day at 6:08 p.m.)

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8 CERTIFICATE OF REPORTER

9 I certify that the foregoing is a correct transcript of
10 the record of proceedings in the above-entitled matter.

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12
13 11/02/2016

14 /s/ Lance A. Boardman, RDR, CRR
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